

**REPORT**  
OF THE  
**Attorney General**  
OF THE  
**State of Florida**

From January 1, 1925, to December 31, 1926.

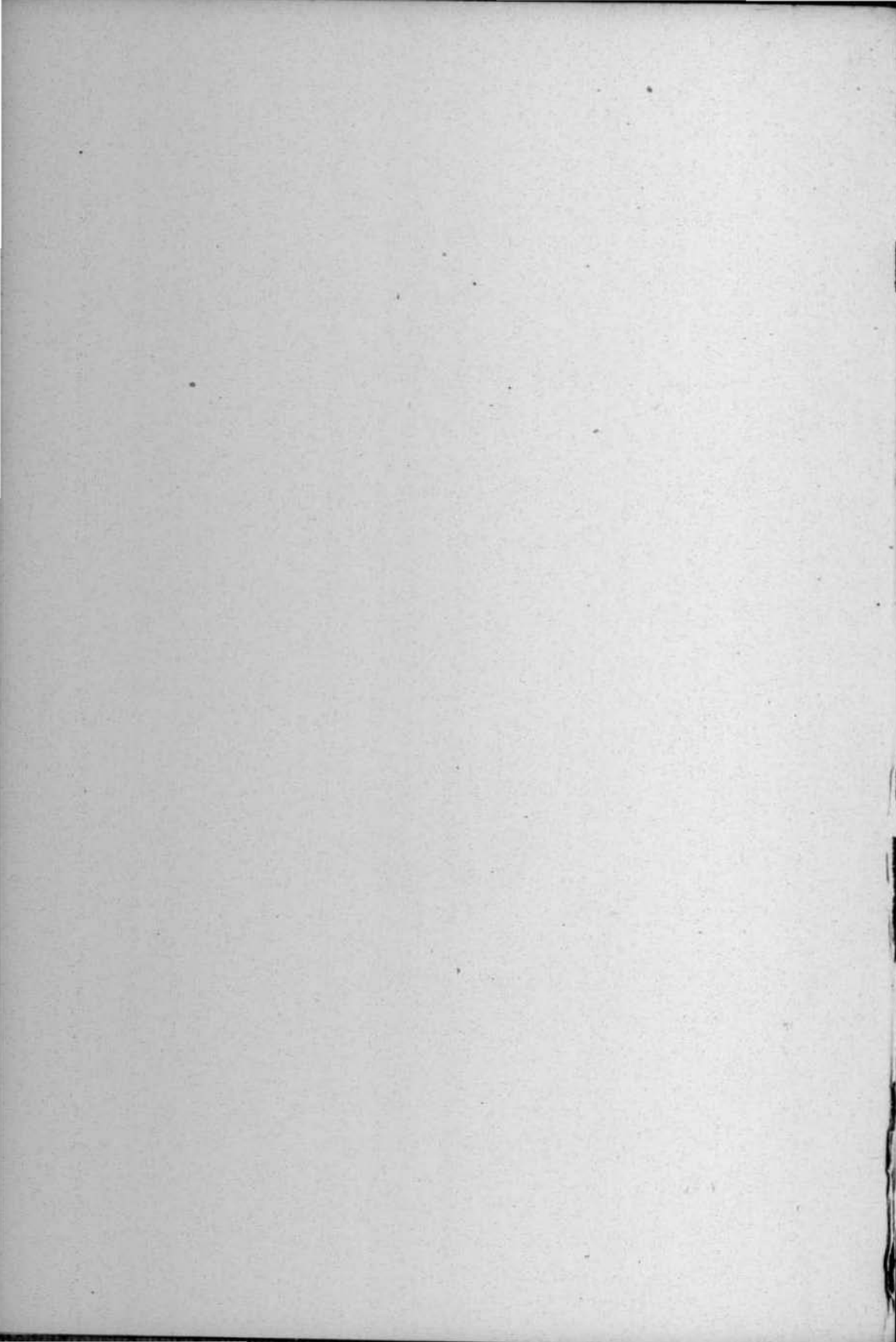
**J. B. JOHNSON**  
Attorney General



**TALLAHASSEE, FLORIDA**

1927

Ptg. Dept.—Fla. Ind. School for Boys





# LIST OF THOSE WHO HAVE HELD THE OFFICE OF ATTORNEY GENERAL OF FLORIDA

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JOSEPH BRANCH .....	1845-1846
AUGUSTUS E. MAXWELL .....	1846-1848
JAMES T. ARCHER .....	1848-1848
DAVID P. HOGUE .....	1848-1853
MARIANO D. PAPY .....	1853-1860
JOHN B. GALBRAITH .....	1860-1868
JAMES D. WESTCOTT, JR. ....	1868-1868
A. R. MEEK .....	1868-1870
SHERMAN CONANT .....	1870-1870
J. B. C. DREW .....	1870-1872
H. BISBEE, JR. ....	1872-1872
J. P. C. EMMONS .....	1872-1873
WILLIAM A. COCKE .....	1873-1877
GEORGE P. RANEY .....	1877-1885
C. M. COOPER .....	1885-1889
WILLIAM B. LAMAR .....	* 1889-1903
JAMES B. WHITFIELD .....	1903-1904
W. H. ELLIS .....	1904-1909
PARK TRAMMELL .....	1909-1913
THOMAS F. WEST .....	1913-1917
VAN C. SWEARINGEN .....	1917-1921
RIVERS BUFORD .....	1921-1925
J. B. JOHNSON .....	1925-1926

## STATE LAW DEPARTMENT

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J. B. JOHNSON	Attorney General
H. E. CARTER	Assistant Attorney General
ROY CAMPBELL	Assistant Attorney General
MRS. ALLIE YAWN BROWN	Law Clerk
MISS ANN R. BRAY	Secretary

# REPORT OF ATTORNEY GENERAL

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## STATE OF FLORIDA

### ATTORNEY GENERAL'S OFFICE

Tallahassee, December 31, 1926.

HONORABLE JOHN W. MARTIN,  
*Governor of Florida.*

SIR:

In obedience to the constitutional mandate directing each officer of the Executive Department to make full reports of his official acts, of the receipts and expenditures of his office and of the requirements of the same, to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with long established custom by which such reports are made to cover the two calendar years immediately preceding each regular session of the Legislature, I have the honor to submit herewith the report of this office covering the period from January 1, 1925, to December 31, 1926.

### GENERAL SCOPE OF DUTIES

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution as follows:

"The Attorney General shall be the legal advisor of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court."

The duties generally prescribed by statute are found in Section 89 of the General Statutes, as follows:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the Capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of this State; he shall appear in and attend to such suits or prosecutions in any other of the courts of this State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof."

The Attorney General is also required by numerous statutes to perform other duties, and he is required by common law to exercise certain powers and perform other duties of great public importance.

### SERVICE ON BOARDS

A great deal of the very important business of the State is performed and handled by Boards and Commissions, created by the constitution and by statutes, which consumes a

considerable portion of the time of the State Officials; among these Boards and Commissions are the following, of all of which the Attorney General is a member:

### BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

The membership of this Board consists of the Governor and his entire cabinet, which includes the Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, and the Commissioner of Agriculture. This Board has the management and control of all the State Institutions, which includes the Industrial School for Boys, the Industrial School for Girls, and the State Hospital, the State Prison Farm, and all State convicts. Necessarily the control and supervision of these institutions, places upon this Board innumerable important duties, and the Attorney General being the legal advisor of this Board makes it necessary for him to not only act as a member of the Board but also to do all the legal work in connection therewith.

### STATE BOARD OF EDUCATION

The membership of the Board consists of the Governor, Secretary of State, Attorney General, State Treasurer, and State Superintendent of Public Instruction. This Board is charged with the duty of taking charge of and handling all the lands held by the State for Educational purposes; to direct and manage and provide for the safe keeping of all the educational funds of the State; and also many other duties in connection with the general educational system. The Attorney General is the legal advisor of this Board as well as a member thereof.

### STATE VOCATIONAL EDUCATIONAL BOARD

Under the provisions of Chapter 7376, Acts of 1917, the Legislature accepted the provisions of the Act of Congress approved February 23, 1917, entitled "An Act to Provide for the Promotion of Vocational Education; to Provide



for the Co-operation with the State in the Promotion of such Education or Agriculture and the Trades and Industries; to Provide for Co-operation with the States in the Preparation of Teachers of Vocational Subjects; and to Appropriate Money and Regulate its Expenditures." Under the provisions of this law the State receives from the United States about Eighteen Thousand Dollars annually to aid in carrying on this work. The State Board of Education was designated as the State Vocational Educational Board, and upon it was placed the duty of designating the schools at which would be taught vocational education in agriculture and the trades and industries, also the carrying out of the provisions of this law. The work of this Board has consumed considerable time.

### STATE BOARD OF PARDONS

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. Under the Constitution this Board may remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment, with a prison population of some 1,400 there are many among them who feel that the powers of this Board should be exercised in their behalf. Consequently a large number of applications for pardon are made to this Board, and as each case is carefully considered much time is consumed in these investigations.

### TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF DRAINAGE COMMISSIONERS

These two Boards are composed of the same officials, and consist of the Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. The Trustees of the Internal Improvement Fund are vested with the title to and have the exclusive management and control of all lands belonging to the State, which were acquired

by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately one million acres. Upon the Board of Drainage Commissioners is laid the duty of establishing a system of canals, drains, levees, dikes and reservoirs to drain and reclaim the swamp and overflowed lands within the drainage districts. Much time is consumed by the Attorney General and other members of the Boards in looking after matters concerning both of these Boards.

### STATE CANVASSING BOARD

This Board is required to canvass the returns of all general elections for State officers. Its membership consists of the Secretary of State, Comptroller and Attorney General.

### BOARD OF TAX EQUALIZERS

This Board was created by the Legislature of 1921, and is composed of the Governor, Attorney General, and State Treasurer. It is the duty of the Board to hear appeals presented by boards of county commissioners from orders issued by the State Tax Equalizer to the County Assessors of Taxes.

### FOREIGN INVESTMENT BOARD

This Board is composed of the Comptroller, who is Chairman, and the Attorney General. It is commonly called the "Blue Sky Board." Applications for permits to sell stock in domestic and foreign corporations are made to this Board. Under the present law the power and authority vested in the Board is extremely limited and entirely inadequate to protect the general public. The Comptroller and the Attorney General prepared a bill and had the same introduced in the Legislature of 1923, the purpose of which was to broaden the powers of the Board and thereby in some degree protect the public from impositions practiced by vendors of worthless stocks and securities. The bill however did not pass into law. It is to be hoped that the Legislature of 1927 will amend the present law so that the Board can not be

forced to grant a permit for the sale of stocks and other securities in this State unless it shall be made to appear to the Board that such stocks or securities constitute reasonably safe investments.

### BOARD OF APPRAISERS OF SECURITIES

This Board is composed of the State Treasurer, the Comptroller and the Attorney General, and it is the duty of the Board to investigate and pass upon the sufficiency of all securities offered for deposit in the office of the State Treasurer, and in this connection it is the duty of the Attorney General to pass upon the validity of the liens created by such securities and to advise the Board whether or not the securities are valid and binding obligations.

### BOARD OF RAILROAD PROPERTY ASSESSORS

This Board is composed of the Comptroller, who is Chairman, the Attorney General and the State Treasurer. The name indicates the scope of the duties of this Board.

### OTHER BOARDS

In addition to the duties laid upon the Attorney General, as member of the above boards, he is required to act with the Commissioner of Agriculture in passing upon questions arising under the Provisions of the "Pure Food and Drugs Act."

### OFFICIAL OPINIONS

During the period covered by this report I have, as required by the Constitution and statutes of this State, from time to time, as requested by the administrative officers of the Executive Department of the State government, advised them and prepared written opinions for them upon various subjects touching their official duties and powers. Copies of all these opinions are preserved in this office, and a number of them are incorporated in this report for the convenient use of such officers and others interested in the subject covered by them.



In addition to these official opinions, although not expressly required by law to do so, but in order to assist in a proper interpretation and application of the statutes pertaining to their powers and duties, I have, when requested, prepared written opinions for other State officers, State boards and commissions, including the State Hotel Commission, State Shell Fish Commission, State Labor Inspector, State Board of Control and State Board of Health. Some of these opinions are also incorporated in this report.

In addition to these written opinions, the Attorney General is frequently called into consultation by other officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessary to intelligently and properly advise in such cases. Necessarily much time is devoted to this work, but because of its character no record of it can be made.

### UNOFFICIAL OPINIONS

In the report of this office immediately preceding this one the following statement on this subject appears and it may be repeated here:

"This office is not charged with the duty of advising county, and district officers, but, as a matter of courtesy to those making inquiry, and with a view to assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, I have, upon request therefor, written a large number of what may be termed unofficial opinions. A number of these communications indicating the character and scope of the inquiries are also incorporated in this report."

All such inquiries are replied to as promptly as the official duties of the office will permit, but it will be understood, of course, that official matters must have first consideration.

## BOND ISSUE EXAMINED FOR THE STATE BOARD OF EDUCATION

In pursuance of the policy of the State Board of Education to invest such of the State School Funds as are available for this purpose in securities issued by counties, municipalities and school and road districts in this State, it has been the duty of this office to examine a number of transcripts of the records of the proceedings had in the issuance of such bonds for the purpose of determining whether or not they were valid and enforceable obligations of the counties, municipalities or districts. Such issues as are purchased are held by the State Treasurer.

## STATE STATUTES TESTED IN THE SUPREME COURT

During the period covered by this report the constitutional validity of a number of State statutes upon important subjects has been challenged and tested by appropriate court proceedings.

### CIVIL CASES

Under the title Schedule of Civil Cases report is made of the civil cases which have had attention.

### CRIMINAL CASES

The Attorney General represents the State in the Supreme Court of the State in all criminal cases and in all certiorari and habeas corpus proceedings.

Briefs on behalf of the State have been prepared and filed in the Supreme Court in all such cases and oral arguments on behalf of the State have been made in all of them in which oral arguments were requested and made by counsel for the plaintiffs in error.

## PUBLISHING ACTS AND RESOLUTIONS OF THE STATE LEGISLATURE

The Acts and Resolutions of the Legislature of this State for the regular session of 1925, were published, with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the Journals of each branch of the Legislature were also prepared under the direction of this office, the index to the Journals having been prepared as provided by Chapter 6436, Acts of 1913, Laws of Florida.

### REPORTER FOR THE SUPREME COURT

The Attorney General is the Reporter for the Supreme Court.

During the period covered by this report four volumes of the opinions of the court have been published, namely, 89, 90, 91, and Vol. 92 is now in the hands of the printer.

A great degree of care must be exercised in this work, as the opinions filed by the court are expected to be accurately reproduced in the reports.

An index-digest and a table of cases are also prepared in this office as a part of each volume of these reports.

Respectfully submitted,

J. B. JOHNSON,

Attorney General.

## APPROPRIATIONS AND EXPENDITURES

### *Appropriations*

January 1, 1925, to June 30, 1925—

Assistant .....	\$ 1,800.00
Assistant .....	1,800.00
Law Clerk .....	900.00
Secretary .....	750.00
Incidental Expenses .....	391.22
Purchase of Books .....	126.28
Office Equipment .....	175.41

Total .....	\$ 5,942.91
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June 30, 1925, to June 30, 1927—

Assistant .....	\$ 8,000.00
Assistant .....	8,000.00
Law Clerk .....	3,600.00
Secretary .....	3,600.00
Incidental Expenses .....	1,600.00
Purchase of Books .....	1,000.00
Office Equipment .....	700.00

Total .....	\$ 26,500.00
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Grand Total .....	\$ 32,442.91
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### *Expenditures*

January 1, 1925, to December 31, 1926—

Assistant .....	\$ 7,800.00
Assistant .....	7,800.00
Law Clerk .....	3,600.00
Secretary .....	3,450.00
Incidental Expenses .....	1,188.38
Purchase of Books .....	836.45

Office Equipment .....	583.99
Amount Reverted July 1, 1926 .....	88.24
Total .....	\$ 25,347.06
Balance to cover all expenses to June 30, 1927 .....	\$ 7,095.85

## ITEMIZED STATEMENT

*Of Expenditures of Attorney General from Appropriation for  
Incidental Expenses.*

1925

January—Geo. D. Barnard Stationery Co., 5 M sheets O. S. Typewriter paper .....	\$ 20.00
Express .....	2.21
10 M Embossed Letter Heads .....	114.00
1500 sheets blank paper .....	12.00
Freight charges .....	4.28
W. U. Tel. Co. messages for December, 1924 .....	6.46
W. H. May, Postmaster, stamps .....	15.00
February—W. U. Tel. Co., messages for Jan., 1925 .....	1.66
Rivers Buford, Attorney General, expense trip to Jacksonville to argue demurrer in re Natl. Surety Co. v Guarantee Trust & Savings Bank et al. ....	13.76
March—W. U. Tel. Co., messages for February, 1925 .....	4.31
Hill's Book Store, Quart Ink and 2 erasers .....	1.45
Rivers Buford, Attorney General, expense trip to Jacksonville to attend Tax Assessors' Meeting .....	24.95
C. G. Ward, Ticket Agent, S. A. L. Ry., Script Book No. 20364 .....	30.00



April—Rivers Buford, Attorney General, expense trip to Jacksonville to attend State Convention, Sheriffs .....	19.01
W. U. Tel. Co., messages for March .....	5.36
The Office Necessity Co., 500 Columbia Clasp envelopes .....	7.00
W. H. May, Postmaster, Stamps for mailing Attorney General's Report .....	20.00
May—W. U. Tel. Co., messages for April .....	9.32
Sou. Tel. & Const. Co., Long Distance to Jacksonville .....	.95
W. H. May, Postmaster, stamps .....	10.00
June—W. U. Tel. Co., messages for May .....	5.00
July—H. R. Kaufman, Cleaning and repairing typewriter .....	7.50
W. U. Tel. Co., messages for June .....	6.86
W. H. May, Postmaster, stamps .....	20.00
August—W. U. Tel. Co., messages for July .....	4.80
W. H. May, Postmaster, stamps for mailing seals to new counties .....	3.50
September—Sou. Tel. & Const. Co., Long Distance Message .....	.80
Leon Elec. Supply Co., repairing fan .....	2.45
W. U. Tel. Co., messages for August .....	5.52
October—American Ry. Express Co., express charges on package to Tampa .....	.44
W. U. Tel. Co., messages for September .....	2.61
November—The Office Necessity Co., 1 dozen reflex sticket fillers .....	2.75
D. A. Dixon Co., 1 M manuscript covers .....	\$ 13.50
1 doz. bottles quick stick mucilage .....	1.75
Sou. Tel. & Const. Co., message to Quincy .....	.25
W. U. Tel. Co., messages for October .....	8.51
E. J. Harcher, Jr., re-arranging books in Library .....	3.00
W. H. May, Postmaster, stamps .....	20.00

December—W. U. Tel. Co., messages for November .....	5.26
1926	
January—Artcraft Printers, overprinting name of J. B. Johnson on 5 M letter heads .....	13.75
The Rhodes Hardware Co., 1 quart O-Cedar Polish .....	1.25
Perfect Typewriter Key Co., 2 sets rubber keys and 2 sets rubber twirling rings .....	9.00
Geo. D. Barnard Stationery Co., 1 Fac Simile Signature Stamp .....	2.61
D. A. Dixon Co., 100 file folders .....	\$ 1.60
100 1-5 cut 3x5 guides .....	1.00
100 3x5 index cards .....	.20
1 dozen pencils .....	.60
1 dozen pen points .....	.15
	3.55
W. U. Tel. Co., messages for December .....	1.35
W. H. May, Postmaster, deposit on or- der for 8000 stamped envelopes .....	\$ 10.06
2 cent stamps .....	9.00
	19.06
February—W. U. Tel. Co., messages for January .....	.45
Geo. D. Barnard Co., embossed letter heads .....	76.08
Geo. D. Barnard, file guides and postage .....	7.48
W. H. May, balance on 8000 stamped envelopes .....	149.00
March—H. E. Carter, Assistant Attorney Gen- eral, expense trip to Jacksonville in re ha- beas corpus hearing Abe Washington .....	20.94
W. U. Tel. Co., messages for February .....	.95
D. A. Dixon, 1 desk calendar .....	1.25
April—W. U. Tel. Co., messages for March .....	3.24
May—Consolidated Cleaners, cleaning 4 rugs for office .....	4.00
W. U. Tel. Co., messages for April .....	1.43
June—Geo. D. Barnard Stationery Co., 2 dozen boxes of eyelets .....	\$ 5.50

2 dozen pencils .....	1.20	
Postage and insurance .....	.32	7.02
W. U. Tel. Co., messages for May .....		10.26
Sou. Tel. & Const. Co., telephone service, May--		5.25
J. B. Johnson, Attorney General, expense trip to Washington, D. C., to move to file suit on Estate Tax Law .....		129.93
Judd & Detwilder, Inc., Printers, for printing 50 copies of brief in case of State v. Andrew W. Mellon, et al. ....		40.00
Judd & Detwilder, Inc., Printers, for printing 50 copies of petition in case of State v An- drew W. Melon et al .....		33.00
Irene Williams, cleaning offices .....		4.57
W. H. May, Postmaster, stamps .....		25.00
Capital Office Supply Co., Hotchkiss Fast- eners .....		1.00
Capital Office Supply Co., Typewriter Desk ....		38.00
The Rhodes Hardware Co., O'Cedar Mop and Polish .....		2.25
Sou. Tel. & Const. Co., exchange service for June .....		4.25
W. U. Tel. Co., messages for June .....		1.11
Capital Office Supply Co., scratch pads, legal size .....		2.50
Underwood Typewriter Co., 1 typewriter .....		48.03
August—Sou. Tel. & Const. Co., exchange ser- vice for July .....		4.55
W. U. Tel. Co., messages for July .....		.38
W. H. May, Postmaster, stamps .....		10.00
September—Sou. Tel. & Const. Co., exchange ser- vice for August .....		4.25
Middle Florida Ice Co., 3 bottles of water .....		1.50
W. U. Tel. Co., messages for August .....		.79
October—Sou. Tel. & Const. Co., exchange ser- vice for September .....		4.25



Postal Tel. Co., telegrams for August .....	3.99
Middle Florida Ice Co., 7 bottles of water .....	3.50
W. U. Tel. Co., messages for September .....	3.48
November—American Railway Express Co., charges on package legal papers to Miami ..	.56
Leon Electric Supply Co., repairing electric fan .....	8.50
Middle Florida Ice Co., 5 bottles of water .....	2.50
Sou. Tel. & Const. Co., exchange service for October .....	5.05
Postal Tel. Co., messages for October .....	3.25
W. U. Tel. Co., messages in October .....	.37
W. H. May, Postmaster, stamps .....	20.00
December—Sou. Tel. & Const. Co., exchange ser- vice for November .....	4.25
Postal Tel. Co., messages for November .....	.47
W. U. Tel. Co., messages for November .....	2.46
Capital Office Supply Co., one 1927 calendar pad .....	.50
Total amount expended 1925-1926 .....	\$ 1,188.38

### COMPILED STATEMENT OF INCIDENTAL EXPENSE ACCOUNT

Balance January 1, 1925 .....	\$ 391.22
Appropriation for 2 years from June 30, 1925 to June 30, 1927 .....	1,600.00
Total .....	\$ 1,991.22
Total amount expended .....	1,188.38
Total amount reverted .....	87.44      1,275.82
Balance to cover purchases to June 30, 1927 .....	\$ 715.40

## ITEMIZED STATEMENT

*Of Expenditures of Attorney General from the Appropriation  
For the Purchase of Books*

1925

January—West Publishing Co., Subscription to—		
N. W. Rep. Vol. 199 .....	\$ 5.50	
S. W. Rep. Vols. 262-263 .....	9.50	
S. E. Rep. Vol. 123 .....	5.50	
Sou. Rep. Vol. 100 .....	4.75	
Atl. Rep. Vol. 125 .....	4.75	
Pac. Rep. Vols. 226, 227, 228 .....	14.25	
Fed. Rep. Vols. 298, 299 .....	7.00	
Amr. Digest, Vol. 20A .....	7.00	\$ 58.25
February—West Publishing Company, Install- ment on contract of June 21, 1923 .....		31.00
Bancroft-Whitney Company, Amr. Law Rep. Vol. 33 .....		7.50
March—American Law Book Company, 1925 Annual Annotations for use with Corpus Juris .....		8.00
Bancroft-Whitney Company, A. L. R. Anno- tated Digest Service 1924, and Blue Book Supplement Decennial Service 1924 .....		5.00
The Lawyers Co-Operative Publish- ing Co., balance due on account ....	\$ 1.00	
Law Book and their use .....	1.50	
L. R. A. Index to notes .....	6.00	8.50
June—Bancroft Whitney. Amr. Law Rep. Vol. 34 .....		7.50
July—Bancroft-Whitney, Amr. Law Rep. Vol. 35 .....		7.50
American Law Book Co., C. J. Vol. 37 .....		7.50
John W. Leonard Corporation, Who's Who in Juris Prudence .....		10.40

West Publishing Co., Subscription to—		
N. W. Rep. Vols. 201, 202 .....	\$ 11.00	
N. E. Rep. Vol. 146 .....	5.50	
S. W. Rep. Vols. 267, 268, 269 .....	14.25	
S. E. Rep. Vol. 126 .....	5.50	
Sou. Rep. Vol. 102 .....	4.75	
Atl. Rep. Vol. 127 .....	4.75	
Pac. Rep. Vols. 231, 232, 233 .....	14.25	
Fed. Rep. Vols. 2, 3 (2nd series) .....	9.50	
Amr. Digest K. N. S. Vol. 21A .....	7.00	
May installment on Acct. of June 21, 1923, and interest .....	31.30	107.80
The Lawyers Co-Operative Publishing Co. U. S. Rep. Book 68 .....		
		7.50
September—West Publishing Company, Installment on contract of June 21, 1923 .....		
		31.00
Bancroft-Whitney Co., Amr. Law Rep. Vol. 36 .....		7.50
The Lawyers Co-Operative Pub. Co.		
R. C. L. Supplement Vol. 5 .....	\$ 10.00	
Hopkins Judicial Code Anno. ....	4.00	14.00
American Law Book Company, C. J. Vol. 38 ..		7.50
October—Frank Shepard Co., One Year's Subscription to Shepard's Florida Citations .....		
		7.00
Bancroft-Whitney Co., Amr. Rep. Vol. 37 ..		7.50
West Publishing Co. subscription to—		
N. W. Rep. Vol. 203 .....	\$ 5.50	
N. E. Rep. Vol. 147 .....	5.50	
S. W. Rep. Vols. 270, 271 .....	9.50	
S. E. Rep. Vol. 127 .....	5.50	
Sou. Rep. Vol. 103 .....	4.75	
Atl. Rep. Vol. 128 .....	4.75	
Pac. Rep. Vols. 235, 236 .....	14.25	
Fed. Rep. Vol. 4 (2 series) .....	4.75	
Amr. Digest K. N. S. Vol. 22-A .....	7.00	61.50
November—The Lawyers Co-Operative Publishing Co., U. S. Advance Sheets, 1925 Term ..		
		3.00

December—Bancroft-Whitney Co., Amr. Law Rep. Vol. 38 .....	7.50
West Publishing Co., installment on contract of June 21, 1923 .....	31.00
1926	
January—West Publishing Co., subscription to—	
N. W. Rep. Vol. 204 .....	\$ 5.50
N. E. Rep. Vol. 148 .....	5.50
S. W. Rep. Vols. 272, 273, 274 .....	14.25
S. E. Rep. Vol. 128 .....	5.50
Sou. Rep. Vol. 104 .....	4.75
Atl. Rep. Vol. 129 .....	4.75
Pac. Rep. Vols. 237, 238 .....	9.50
Fed. Rep. Vols. 5, 6 (2nd series) .....	9.50
	59.25
February—The American Law Book Co., Cor-Juris Vol. 39 .....	7.50
Bancroft-Whitney Co., Amr. Law Rep. Vol. 39 .....	7.50
Thomas Law Book Co., Cornelius on Search and Seizure .....	10.00
West Pub. Co., Balance on contract of June 21, 1923 .....	30.00
April—West Pub. Co., N. W. Rep. Vol. 205 .....	\$ 5.50
N. E. Rep. Vol. 149 .....	5.50
S. W. Rep. Vols. 275, 276, 277 .....	14.25
S. E. Rep. Vol. 129 .....	5.50
Sou. Rep. Vol. 105 .....	4.75
Pac. Rep. Vols. 239, 240, 241 .....	14.25
Fed. Rep. Vol. 7 (2nd series) .....	4.75
Amr. Digest K. N. S. Vol. 23-A .....	7.00
Sou. Rep. Dig. Vols. 101-105 .....	1.50
	67.75
July—West Pub. Co., subscription to—	
N. W. Rep. Vols. 206-207 .....	\$ 11.00
N. E. Rep. Vol. 150 .....	5.50
S. W. Rep. Vols. 278, 279, 280 .....	14.25
S. E. Rep. Vols. 130, 131 .....	11.00
Sou. Rep. Vol. 106 .....	4.75

Atl. Rep. Vol. 131 .....	4.75	
Pac. Rep. Vols. 242, 243, 244 ..	14.25	
Fed. Rep. Vols. 8, 9, 10 (2nd series) .....	14.25	
Amr. Digest K. N. S., Vol. 24-A ..	7.00	86.75
Bancroft-Whitney Co., Amr. Law Rep. Vol. 40, 41 .....		15.00
Lawyers Co-Operative Pub. Co., U. S. Rep. Vol. 69 .....		7.50
August—Bancroft-Whitney Co., Amr. Law Rep. Vol. 42 .....		7.50
September—The Frank Shepard Co., Shepard's Florida Citations .....		7.00
October—Bancroft-Whitney Co., Amr. Law Rep. Vol. 43 .....		7.50
West Publishing Co., subscriptions to—		
N. W. Rep. Vol. 208 .....	\$ 5.50	
N. E. Rep. Vol. 151 .....	5.50	
S. W. Rep. Vols. 181, 182, 183 ..	14.25	
S. E. Rep. Vol. 132 .....	5.50	
Sou. Rep. Vols. 107, 108 .....	9.50	
Atl. Rep. Vol. 132 .....	4.75	
Pac. Rep. Vol. 245, 246 .....	9.50	
Fed. Rep. Vol. 11 (2nd Ed.) ..	4.75	59.25
December—Bancroft-Whitney Co., Amr. Law Rep. Vol. 44 .....		7.50
The American Law Book Co., Corpus Juris, Vol. 40 .....		7.50
West Publishing Co., Hopkins Judicial Code ..		5.00
Total amount expended 1925-1926 .....		\$ 836.45

## COMPILED STATEMENT OF BOOK ACCOUNT

Balance January 1, 1925 .....	\$ 126.28	
Appropriation for 2 years from June 30, 1925 to June 30, 1927 ..	1,000.00	
Total .....		\$ 1,126.28



Total amount expended .....	836.45	
Total amount reverted July 1, 1926 .....	.33	836.78
Balance to cover purchases to June 30, 1927 .....		\$ 289.50

## ITEMIZED STATEMENT

*Of Expenditures of Attorney General from Appropriation for  
Office Equipment*

1925

February—Underwood Typewriter Co., 1 type- writer .....	\$ 58.03
Frank Martin, repairing chair and table .....	4.65
May—Line-A-Time Mfg. Co., Inc., 2 Line-A- Times .....	36.00
West Publishing Co., 15 Law Books .....	76.50
September—D. A. Dixon, 1 binder, 300 sheets paper .....	4.25
Geo. D. Barnard, stationery .....	13.03
T. J. Appleyard, scrap ledger .....	1.00
Chas. N. Smart, 1 Bostitch fastener and staples .....	6.50
D. A. Dixon, 1 pencil sharpener .....	2.00
Tallahassee Furniture Co., Globe-Wernicke book cases, 28 sections .....	167.20

1926

February—D. A. Dixon, 1 oak chair .....	18.50
March—The Michie Co., 1925 Florida Cumula- tive Statutes .....	20.00
T. J. Appleyard, cards for index and envelopes .....	12.00
April—D. A. Dixon, 1 box Acco fasteners .....	1.25
The W. H. Anderson Co., 2 Cochran's Law Lex- icons .....	3.00
American Law Book Co., 1926 C. J. Annota- tions .....	8.00

Bancroft-Whitney Co., Amr. Law Rep. Annotated-Digest Service 1925, including two year Digest (28-39) and 1926 Blue Book of Supplemental Dec's .....	5.00
June—Collins Furniture Co., 2 rubber door mats .....	3.00
Underwood Typewriter Co., 1 typewriter .....	55.33
Capital Office Supply Co., 6000 sheets ruled paper .....	29.70
August—Bass Hardware Co., 1 pair scissors .....	1.25
Williams Hardware Co., 1 pair scissors .....	1.25
Capital Office Supply Co., erasers, art gum, and clamp for pencil sharpener .....	.75
George D. Barnard Co. 10 boxes ruled typewriter paper, insurance and postage .....	28.35
D. A. Dixon Co., 1 mat for water cooler .....	3.00
September—Capital Office Supply Co., pen points and pencils .....	2.10
October—Capital Office Supply Co., box pen points 1.50, bottle typewriter oil .30 .....	1.80
J. E. McNair, bottle Fly Tox, .50; bottle denatured alcohol .35 .....	.85
November—T. J. Appleyard, index cards .....	1.75
Capital Office Supply Co., 1 dozen pencils .60, typewriter brush .35 .....	.95
December Craig & Co., 2 boxes carbon paper .....	6.00
Capital Office Supply Co., 2 sections legal transfer file cases .....	11.00
Total amount expended 1925-1926 .....	\$ 583.99

### COMPILED STATEMENT OF OFFICE EQUIPMENT ACCOUNT

Balance January 1, 1925 .....	\$ 175.41
June 30, 1925, to June 30, 1927 .....	700.00
Appropriation for 2 years from .....	
Total .....	\$ 875.41

Total amount expended .....	583.99	
Amount reverted to State .....	.47	584.46
Balance to cover purchases to June 30, 1927 .....	\$	290.95



## SCHEDULE OF CIVIL CASES

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CHANCERY

*Circuit Court First Judicial Circuit of Florida in and for  
Escambia County. In Chancery.*

*American National Bank of Pensacola,  
Complainant,*

*vs.*

*J. S. Roberts, as Tax Collector,  
Defendant.*

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the capital stock, or shares of the Complainant Bank for the year 1925. Demurrer to Bill was filed and was overruled and temporary injunction granted, from which ruling defendants appealed. Case now pending in the Supreme Court.

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*Circuit Court First Judicial Circuit of Florida in and for  
Escambia County. In Chancery.*

*Warren E. Anderson,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This suit was brought in an effort to cancel certain tax certificates issued upon certain property in Escambia County upon sale of such property because of the non-payment of taxes. Consent decree entered whereby complainant was to pay all outstanding taxes, without interest, and upon the payment of such taxes the tax sale certificates mentioned in the Bill of Complaint were to be cancelled by the Clerk and surrendered to the complainant. Suit dismissed.

*Circuit Court, Second Judicial Circuit of Florida in and for  
Franklin County. In Chancery.*

*Apalachicola Land & Development Co.,  
etc., et al., Complainants,*

*vs.*

*W. A. McRae, Commissioner of  
Agriculture, Defendant.*

This suit was brought for the purpose of enjoining and restraining the Defendant from leasing or in any way interfering with the submerged lands of the Apalachicola Bay. A demurrer to bill of complaint was filed, which was sustained, and bill ordered dismissed by the Circuit Court. Complainants appealed to Supreme Court where Order Circuit Court was affirmed. Appeal taken to United States Supreme Court—Appeal dismissed.

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*Circuit Court, Second Judicial Circuit of Florida in and for  
Leon County. In Chancery.*

*Atlantic Coast Line Railroad  
Company, Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
Defendant.*

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller or any other writ, order or process, in attempting to collect from said Railroad Company, certain taxes, etc. Consent Decree entered January, 1925, and suit dismissed.

*Circuit Court, Second Judicial Circuit of Florida in and for  
Leon County. In Chancery.*

*Atlantic Coast Line Railroad  
Company, Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
Defendant.*

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller, or any other writ, order or process, in attempting to collect from said Railroad Company certain taxes, etc. A demurrer was filed to Complainant's bill on October 5, 1925, and on April 16, 1926, the Court entered an order sustaining said demurrer, denying Complainant's application for a temporary restraining order, from which order an appeal was taken to the Supreme Court, where cause is still pending.

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*Circuit Court, Fifteenth Judicial Circuit of Florida in and  
For Palm Beach County. In Chancery.*

*William W. Dewhurst,  
Complainant,*

*vs.*

*Fred E. Fenno, Clerk Circuit Court,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain Drainage Tax Certificates dated July 2, 1923, issued upon certain land in Palm Beach County. An answer on behalf of Defendants was filed. Case settled by payment of taxes without interest.

*Circuit Court, Eleventh Judicial Circuit of Florida, in and  
For Dade County. In Chancery.*

*Everglades Land Sales Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Dade County upon sale of such property because of the non-payment of taxes for the years, 1916, 1917, 1918, and 1919. A demurrer on behalf of Defendants was sustained to all parts of bill seeking to set aside certificates for 1919, and overruled as to all parts of bill seeking to set aside certificates for 1916, 1917 and 1918. Order allowing Defendants to answer was made by court. Answer filed. Consent decree entered, tax certificates cancelled and lands reassessed for all outstanding taxes.

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*Circuit Court, Eleventh Judicial Circuit of Florida, in and  
For Dade County. In Chancery.*

*Everglades Land Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Dade County upon sale of such property because of the non-payment of taxes for the years 1916, 1917, 1918 and 1919. A demurrer on behalf of Defendants was sustained to all parts of bill seeking to set aside certificates for 1919, and overruled as to all parts of bill seeking to set aside certificates for 1916, 1917 and 1918. An order allowing defendants to answer was made by Court. Answer filed. Consent decree

entered, tax certificates cancelled and lands reassessed for all outstanding taxes.

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*Circuit Court, Eleventh Judicial Circuit of Florida, in and  
For Dade County. In Chancery.*

*Everglades Sugar & Land Company,  
Complainants,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Dade County upon sale of such property because of the non-payment of taxes for the years 1916, 1917, 1918 and 1919. A demurrer on behalf of defendants was sustained to all parts of bill seeking to set aside certificates for 1919, and overruled as to all parts of bill seeking to set aside certificates for 1916, 1917 and 1918. Order allowing defendants to answer was made by Court. Answer filed. Consent decree entered, tax certificates cancelled and lands reassessed for all outstanding taxes.

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*Circuit Court, Fifteenth Judicial Circuit of Florida, in and  
For Broward County. In Chancery.*

*Everglades Land Sales Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the year 1917. A demurrer on behalf of defendants was filed, which demurrer was sustained April 29,



1924, and Complainant given leave to file amended bill on or before the Rule Day in June, 1924. No amended bill filed. Suit dismissed.

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*Circuit Court, Fifteenth Judicial Circuit of Florida, in and  
For Broward County. In Chancery.*

*Everglades Sugar & Land Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, which demurrer was sustained April 29, 1924, and Complainant given leave to file amended bill on or before the Rule Day in June, 1924. No amended bill filed. Suit dismissed.

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*Circuit Court, Fifteenth Judicial Circuit of Florida, in and  
For Broward County. In Chancery.*

*Everglades Land Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, which demurrer was sustained April 29, 1924, and Complainant given leave to file amended bill on or before the Rule Day in June, 1924. No amended bill filed. Suit dismissed.

*Circuit Court, Fifteenth Judicial Circuit of Florida, in and  
For Broward County. In Chancery.*

*Everglades Land Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, and overruled. Certificates cancelled and suit dismissed.

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*Circuit Court, Fifteenth Judicial Circuit of Florida, in and  
For Broward County. In Chancery.*

*Everglades Sugar & Land Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificate numbered 2294 issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the year 1917. A demurrer, also amended demurrer, was filed, and overruled. Certificates cancelled and suit dismissed.

*Circuit Court, Fifteenth Judicial Circuit of Florida, in and  
For Broward County. In Chancery.*

*Everglades Sugar & Land Company,  
Complainant,*

*vs.*

*Ernest Amos, Comptroller,  
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, and overruled. Certificates cancelled and suit dismissed.

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*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County. In Chancery.*

*Fidelity & Deposit Company of  
Maryland, Complainant,*

*vs.*

*J. C. Luning, as Treasurer,  
Defendant.*

This is a suit wherein Complainant prayed that the Defendant be restrained and enjoined from insisting upon his demands for the deposit of additional current funds or marketable securities in the sum of \$123,600.00 or any other sum and that he be restrained and enjoined during the pendency of this suit and thereafter by Final Decree from revoking or causing to be revoked Complainant's license or certificate of authority to transact the business of a Surety Company in this State. Temporary restraining order granted; a demurrer and motion to dissolve the temporary restraining order were filed; whereupon the Court entered an order sustaining the demurrer and granting motion to dissolve the injunction and dismissing bill of complaint. Case appealed to the Supreme Court where now pending.



*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County. In Chancery.*

*Florida East Coast Railway Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
Defendant,*

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller or any other writ, order or process, in attempting to collect from said Railway Company, certain taxes, etc. Answer to Bill of Complaint filed December 1, 1924. Decree entered January, 1925, for \$32,160, which amount was paid and suit dismissed.

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*In the Supreme Court of Florida*

*The Guarantee Trust & Savings Bank,  
Complainant,*

*vs.*

*United States Trust Company, et al.,  
Defendants.*

This is a suit which was brought in the Circuit Court of Duval County, praying cancellation and rescission of a certain contract and agreement made July 15, 1922. Separate demurrers were filed. On July 31, 1924, an order was made sustaining the demurrers, from which order an appeal was taken to the Supreme Court on August 1, 1924. On October 7, 1924, Motion for Injunction was filed, upon which motion the case is now pending.

*In the Supreme Court of Florida*

*Harry Gwynn,*  
*Appellant,*

*vs.*

*Cary A. Hardee, as Governor, et al.,*  
*Appellees.*

This is a case which was brought in the Circuit Court of Leon County praying for a temporary injunction to restrain the defendants, etc., from carrying out, performing, or in any manner acting under, or doing any matter or thing in pursuance of or in the furtherance, enforcement or performance of either or any of certain contracts which had been entered into between the State and certain publishing companies or of the proclamation of the Governor dated March 20, 1924, made pursuant to Section 14, Chapter 8500, Acts of 1921. Application for temporary injunction was argued orally, and briefs submitted. The Court on August 21, 1924, entered its order denying the injunction, from that order appeal was taken to the Supreme Court where judgment was affirmed. Motion for rehearing filed, but was denied by Court on November 2, 1926.

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*Circuit Court, Eleventh Judicial Circuit of Florida, in and  
 For Dade County. In Chancery.*

*B. F. Hampton, et al.,*  
*Complainants,*

*vs.*

*State Board of Education,*  
*Defendants.*

This is an injunction suit brought for specific performance of a certain contract alleged to have been made in 1893. Demurrer was filed by the Attorney General on behalf of Defendants, which demurrer was sustained. Case appealed to Supreme Court where judgment was affirmed.

*Circuit Court, Fourth Judicial Circuit of Florida, in and for  
Duval County. In Chancery.*

*Iona Drainage District,  
Complainant,*

*vs.*

*A. P. Anthony, as sole Receiver of  
United States Trust Co., Ernest Amos,  
as Comptroller and John C. Luning, as  
State Treasurer, Defendants.*

This is a supplementary proceeding wherein Complainant filed petition alleging that it had deposited certain bonds to be held as a trust fund with the United States Trust Company, and that these bonds had been deposited by U. S. Trust Company in the office of the State Treasurer under the Trust Act; and that U. S. Trust Company was without authority to pledge such bonds in the office of the State Treasurer under the Trust Act. Answer was filed on behalf of John C. Luning on October 3, 1924.

*Circuit Court, Fourth Judicial Circuit of Florida, in and for  
Duval County. In Chancery.*

*A. M. Ives and J. H. Patterson,  
Complainants,*

*vs.*

*Ernest Amos, as Comptroller and  
Frank Brown, as Clerk,  
Defendants.*

This suit was brought for the purpose of cancelling certain tax certificates issued upon sale of certain property in Duval County for the non-payment of taxes thereon. Demurrer was filed by defendants on November 2, 1925, which demurrer was overruled. Case settled and taxes paid.

*Circuit Court, First Judicial Circuit of Florida, in and for  
Escambia County. In Chancery.*

*William H. Knowles, Ralphine A. Fisher  
and William Fisher, as Trustee, etc.,  
Complainants,*

*vs.*

*(2 suits)*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

These suits were brought in an effort to cancel certain tax certificates issued upon certain property in Escambia County upon the sale of such property because of the non-payment of taxes. Consent decrees, entered whereby complainants were to pay all outstanding taxes, without interest, and upon the payment of such taxes the tax sale certificates mentioned in the Bill of Complaint were to be cancelled by the Clerk and surrendered to the complainants. Suits dismissed.

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*Circuit Court, Fourth Judicial Circuit of Florida, in and for  
Duval County. In Chancery.*

*J. C. Luning, as State Treasurer,  
et al., Complainants,*

*vs.*

*The Guaranty Company, et al.,  
Defendants.*

This is a suit brought for the purpose of foreclosing a mortgage given for the purpose of securing the payment of a certain promissory note executed and dated at Jacksonville, Florida, on the 23rd day of October, 1922, payable one year after date to the order of the United States Trust Company, one of the Complainants, in the sum of \$34,500.00 with interest, etc., which note and mortgage was deposited in trust with J. C. Luning, State Treasurer.

*Circuit Court, Nineteenth Judicial Circuit of Florida, in and  
For DeSoto County. In Chancery.*

*Drew B. Mills and Luther P. Mills,  
Complainants,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This suit was brought in an effort to cancel certain tax certificates issued upon certain property in DeSoto County upon sale of such property because of the non-payment of taxes. Stipulation filed wherein it was agreed that the judge of said Court should decree and determine the amount of taxes lawfully assessable against the lands described in the Bill of Complaint. Final Decree entered, taxes paid and suit dismissed.

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*Circuit Court, Fourth Judicial Circuit of Florida, in and for  
Duval County. In Chancery.*

*National Surety Company,  
Complainant,*

*vs.*

*Guaranty Trust and Savings Bank,  
et al., Defendants.*

This is a suit brought by Complainant where it prays to have an accounting taken of the amount due it under and by virtue of a certain written agreement dated March 1, 1922, by and between Guaranty Trust & Savings Bank and National Surety Company. Separate demurrers were filed on behalf of defendants the fifth ground of each being sustained.



*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County. In Chancery.*

*T. L. Pelham,  
Complainant,*

*vs.*

*H. Clay Crawford, Secretary of State of  
Florida, Defendant.*

This was an action brought to enjoin the defendant from executing any of his official duties touching the nomination and election of members of the House of Representatives and the Senate of the State of Florida because of the alleged unconstitutionality of the Act of the Legislature of 1887, known as Chapter 3703. Application for restraining order was denied. Case appealed to Supreme Court where it was ordered that the prayer of counsel for complainant for a temporary injunction be denied. The Court on March 24, 1925, dismissed *sua sponte* the appeal in this case.

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*Circuit Court, Nineteenth Judicial Circuit of Florida, in and  
For DeSoto County. In Chancery.*

*M. G. L. Roberts,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This suit was brought in an effort to cancel certain tax certificates issued upon certain property in DeSoto County upon sale of such property because of the non-payment of taxes. Stipulation filed wherein it was agreed that the Judge of said Court should decree and determine the amount of taxes lawfully assessable against the lands described in the Bill of Complaint. Final Decree entered, taxes paid and suit dismissed.

*Circuit Court, Second Judicial Circuit of Florida, in and for  
Franklin County. In Chancery.*

*Geo. W. Saxon, and Saint George  
Co-operative Colony, Complainants,*

*vs.*

*W. A. McRae, Commissioner of Agriculture,  
et al., Defendants.*

This suit was brought for the purpose of enjoining and restraining the Defendants from leasing or in any way interfering with submerged lands of the Apalachicola Bay. A demurrer to the Bill of Complaint was filed, which demurrer was sustained. Case stands in statu quo awaiting decision from Supreme Court of the United States in the case of Apalachicola Land & Dev. Co., et al. v. W. A. McRae.

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*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County. In Chancery.*

*Seaboard Air Line Railway Company,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller,  
Defendant.*

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller or any other writ, order or process, in attempting to collect from said Railway Company, certain taxes, etc. Answer to Bill of Complaint filed December 1, 1924. Decree entered January 1925 for \$8,683.52. Suit dismissed.

*Circuit Court, Suwannee County,  
Florida. In Chancery.*

*Seaboard Air Line Railway,  
Complainant,*

*vs.*

*Suwannee County, and G. W. Brannan,  
et al., Defendants.*

This suit was instituted for the purpose of enjoining and restraining the defendants from using and occupying for highway purposes, or otherwise, the Complainant's right of way. Suit dismissed.

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*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County. In Chancery.*

*Harry R. Seigler, et al.,  
organized and existing as a Mutual  
Organization under the laws of  
Pennsylvania, and under the name and  
style of Mutual Transit Company,  
Complainants,*

*vs.*

*Ernest Amos, as Comptroller of the State  
of Florida, Defendant.*

This was an action brought seeking to enjoin and restrain defendant from prosecuting or interfering in any way with the work being done by complainants because of the alleged claim and the demand for certain license fees on fourteen motor trucks being operated by said Complainants within this State. Settled by agreement and suit dismissed.

*Circuit Court, Eleventh Judicial Circuit of Florida, in and  
For Dade County. In Chancery.*

*State of Florida, and John W. Martin,  
as Governor, et al., Complainants,*

*vs.*

*Southern Drainage District, et al.,  
Defendants.*

This suit was brought for the purpose of removing cloud from title to certain State School lands in Dade County, the defendants claiming and asserting an interest in and title to said lands under and by virtue of a final decree of foreclosure and tax deeds. Demurrers on behalf of defendants were filed, and overruled, whereupon an appeal was taken to the Supreme Court, where case is still pending.

*Circuit Court, First Judicial Circuit of Florida, in and for  
Escambia County. In Chancery.*

*Mrs. Estelle J. Sublette,  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This suit was brought in an effort to cancel certain tax certificates issued upon certain property in Escambia County upon sale of such property because of the non-payment of taxes. Consent decree entered whereby complainant was to pay all outstanding taxes, without interest, and upon the payment of such taxes the tax sale certificates mentioned in the Bill of Complaint were to be cancelled by the Clerk and surrendered to the complainant. Suit dismissed.

*Circuit Court, First Judicial Circuit of Florida, in and for  
Escambia County. In Chancery.*

*The Banking, Savings & Trust Company  
of Pensacola, Florida, as Trustee  
Complainant,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Escambia County upon sale of such property because of the non-payment of taxes. Consent decree entered whereby complainant was to pay all outstanding taxes, without interest, and upon the payment of such taxes the tax sale certificates mentioned in the Bill of Complaint were to be cancelled by the Clerk and surrendered to the complainant. Suit dismissed.

*Circuit Court, First Judicial Circuit of Florida, in and for  
Escambia County. In Chancery.*

*C. Theisen,  
Complainant,*

*vs.*

*(2 suits)*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

These suits were brought in an effort to cancel certain tax certificates issued upon certain property in Escambia County upon sale of such property because of the non-payment of taxes. Consent decrees entered whereby complainant was to pay all outstanding taxes, without interest, and upon the payment of such taxes the tax sale certificates mentioned in the Bill of Complaint were to be cancelled by the Clerk and surrendered to complainant. Suits dismissed.



*Circuit Court, Nineteenth Judicial Circuit of Florida, in and  
For Hardee County. In Chancery.*

*E. D. Treadwell,*

*vs.*

*Ernest Amos, as Comptroller,  
and S. W. Conroy, Clerk,  
Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon sale of certain property for the non-payment of taxes thereon. Consent decree entered whereby Court was to determine the amount of taxes lawfully assessable against the lands described in accordance with Chapter No. 10023, Acts of 1925. Taxes paid and suit dismissed.

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*Circuit Court, Nineteenth Judicial Circuit of Florida, in and  
For DeSoto County. In Chancery.*

*B. F. Wells,*

*Complainant,*

*vs.*

*Ernest Amos, as Comptroller, et al.,  
Defendants.*

This suit was brought in an effort to cancel certain tax certificates issued against certain property of the Complainant in DeSoto County. Consent decree entered whereby Complainant shall pay all taxes which could have been legally assessed against the property for the years for which no taxes have been paid.

## MANDAMUS

*In the Supreme Court of Florida.*

*State of Florida, ex rel., American  
Bakeries Company, Realtor,*

*vs.*

*H. Clay Crawford, Secretary of State  
of the State of Florida, Respondent.*

This was an action brought by Realtor seeking mandamus to compel Respondent to accept a certain sum of money as a proper amount of charter tax and fee prerequisite to the issuing of a permit to do business in this State, and to thereupon issue said permit. Alternative writ issued. Motion to quash said writ was filed June 1, 1925, and on July 1, 1925, brief was also filed. The Court on July 27, 1925, dismissed said writ.

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*Circuit Court, Second Judicial Circuit of Florida, in and  
For Leon County.*

*State of Florida, ex rel.  
W. H. Cox, Realtor.*

*vs.*

*Ernest Amos, as Comptroller,  
Respondent.*

This was a case brought by the Realtor seeking mandamus to compel Respondent to pay out of the 1921 appropriation for the State Board of Health a balance or balances claimed to be due said Realtor for traveling expenses, etc. An alternative writ of mandamus was issued, and motion made by Respondent to quash the writ. No action taken by Court.

*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County. In Chancery.*

*State of Florida ex rel. Manatee County  
Building & Loan Association, Complainant,*  
*vs.*

*H. Clay Crawford, Secretary of State,  
Defendant.*

This is a suit wherein Complainant prays that writ of mandamus be granted, commanding and requiring Defendant to immediately file in his office a Certified Copy of Resolution increasing the Capital Stock of Complainant, and to duly certify to copy thereof to be filed in office of the Clerk of the Circuit Court of Manatee County, Florida.

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*In the Supreme Court of Florida.*

*State ex rel. R. R. Riley,  
Realtor,*

*vs.*

*W. S. Cawthon, State Superintendent  
of Public Instruction, Respondent.*

Petition for mandamus was filed in this case praying for an alternative writ of mandamus against the Respondent thereby compelling him to issue to Realtor a life certificate as provided by Chapter 9122, Acts of 1923. Alternative writ issued. Return to alternative writ was filed by Respondent, whereupon Realtor moved that Peremptory Writ issue, which motion was denied.

*In the Circuit Court, Alachua County.*

*State ex rel. E. C. F. Sanchez  
and Mabel A. B. Sanchez, Complainants,  
vs.  
S. H. Wienges, Clerk Circuit Court,  
Defendant.*

The Complainant filed a bill for a Writ of Mandamus to issue to cause the Appellee to permit the redemption of certain tax certificates, alleging that such redemption was authorized by Chapter 7272, Laws of 1917. The Defendant filed a demurrer to the bill, and the case is now pending. Case papers lost.

*Circuit Court, Second Judicial Circuit of Florida, in and  
For Leon County.*

*State ex rel. Ruth Sandlin,  
a minor by Wm. Hodges, her  
next friend, Realtor,  
vs.  
State Board of Education,  
Respondent.*

Petition for writ of mandamus was filed in this case praying that Realtor be awarded a scholarship to the Florida State College for Women for the year 1924 from Hamilton County, in accordance with Chapter 9134, Acts of 1923, Laws of Florida. Alternative Writ issued. Motion to quash alternative writ was filed by Respondent upon which motion suit is now pending.

*In the United States Supreme Court*

*State of Florida,  
Complainant,*

*vs.*

*Andrew W. Mellon, as Secretary  
of the Treasury of the United  
States, and David H. Blair, as  
Commissioner of Internal Revenue,  
Defendants.*

The question before the above Court is a motion by the Sovereign State of Florida to be allowed to file her original Bill of Complaint against the above named defendants, said bill asking that the defendants named be enjoined from collecting estate taxes from estates of decedents in the State of Florida as provided for in the estate tax provision of the Revenue Act of February 26th, 1926. Now before Court under advisement.

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COMMON LAW

*Circuit Court, Eighth Judicial Circuit of Florida, in and for  
Alachua County.*

*King Lumber Co.,  
Plaintiff,*

*vs.*

*State Board of Control,  
Defendant.*

This is a suit brought to recover a balance alleged to be due by the defendant to plaintiff on account of a contract for the construction of a building by plaintiff for defendant on the grounds of the University of Florida at Gainesville. Demurrer to plaintiff's replication was overruled, and case appealed to Supreme Court where pending.



*Circuit Court, Second Judicial Circuit of Florida, in and for  
Leon County.*

*Park Trammell, et al., as the Board of  
Commissioners of State Institutions,  
Plaintiffs,*

*vs.*

*DeLeon Naval Stores Company,  
a Corporation, et al., Defendants.*

This is a suit brought against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,060.74. The executors of the estate of J. B. Conrad, deceased, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. The case is still pending before the Court.

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*Circuit Court, Liberty County, Florida.*

*A. H. Wolyn,  
Plaintiff,*

*vs.*

*Apalachicola Northern Railroad Co.,  
et, al., Defendants.*

This is a suit brought to recover damages alleged to have been sustained by failure of Defendants to place cars for the shipment of certain Japanese Seed Cane of the value of \$1,694.59, with interest from April 1, 1921, and \$11,260.00 with interest from April 1, 1922. Pending on demurrer to amended declaration.

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### QUO WARRANTO

Authority was granted by the Attorney General to the parties whose names appear below to institute proceedings in *Quo Warranto*. A statement of the purpose of the suit is given in each case.

*Brandon, Gage & Hancock, Clearwater, Fla.*

March 16, 1925.

This proceeding was brought for the purpose of testing the validity of an election held for the purpose of annexing certain territory to the town of Largo.

---

*W. M. Bostwick, Jr., Jacksonville, Fla.*

March 24, 1925.

This proceeding was brought for the purpose of dissolving the Baldwin Drainage District of Duval County, alleged to have been illegally created.

---

*W. B. Dickenson and  
Thomas Palmer, Tampa, Fla.*

May 2, 1925.

This proceeding was instituted in Polk County and involves the question of the legality of the Incorporation of a Company for Profit, known as the Gentry-Futch Company.

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*Mr. W. B. Dickenson, Tampa, Fla.*

June 20, 1925.

This proceeding was instituted for the purpose of testing the legality of an Act of the Legislature extending the City Limits of the Town of Largo.

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*Mr. W. P. Chavous, Cross City, Fla.*

June 22, 1925.

This proceeding was brought to test the corporate existence of the town of Cross City, and the officers thereof.

---

*Messrs. Shutts & Bowen, Miami, Fla.*

July 10, 1925.

This proceeding was brought to test the validity of the attempted incorporation of the settlement of Hialeah.

*Messrs. Duncan & Hamlin, Tavares, Fla.*

July 14, 1925.

This proceeding was brought to test the right of two certain parties to hold the office of President of Groveland Farms Co.

---

*Messrs. Shutts & Bowen, Miami, Fla.*

July 19, 1925.

This proceeding was brought to test certain powers and authorities being exercised by the City of Hialeah.

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*Mr. James H. Daniel, Chipley, Fla.*

January 11, 1926.

This proceeding was brought to test the right of certain parties to hold the office of Aldermen of the town of Noma, Florida.

---

*Mr. James H. Daniel, Chipley, Fla.*

January 11, 1926.

This proceeding was brought to test the right of a certain party to hold the office of Mayor of the Town of Noma, Florida.

---

*Mr. James H. Daniel, Chipley, Fla.*

January 11, 1926.

This proceeding was brought to test the right of two certain parties to hold the office of Marshal of the Town of Noma, Florida.

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*Messrs. Drew & Brown, West Palm Beach, Fla.*

February 8, 1926.

This proceeding was brought for the purpose of contesting an election held in the Town of Lantana, Palm Beach County, Florida.

*Messrs. Dame & Rogers, Fort Pierce, Fla.*

February 22, 1926.

This proceeding was brought to test the right of a certain party to use, enjoy, exercise and perform the functions and powers and office of Supervisor of North St. Lucie River Drainage District.

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*Messrs. Mabry, Reaves & Carlton, Tampa, Fla.*

March 6, 1926.

This proceeding was instituted for the purpose of testing the legality of an Act of the Legislature creating Greater Sarasota.

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*Mr. W. D. Bell, Arcadia, Fla.*

March 6, 1926.

This proceeding was instituted for the purpose of testing the legality of an Act of the Legislature relating to the municipal corporation of Lake Stearns.

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*Mr. Francis B. Carter, Pensacola, Fla.*

March 12, 1926.

This proceeding was brought for the purpose of testing the validity of the organization of Panama City by the Legislature at its extraordinary session, 1925.

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*Mr. Vincent C. Giblin, Fort Lauderdale, Fla.*

*Mr. James M. Carson, Miami, Fla.*

April 5, 1926.

This proceeding was brought for the purpose of testing the legality of the incorporation of the Town of Hollywood.

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*Messrs. Maguire & Voorhis, Orlando, Fla.*

May 13, 1926.

This proceeding was brought for the purpose of testing the validity of Chapter 11085, Acts of 1925, incorporating the Town of Pinecastle.

*Evans & Mershon, Miami, Fla.*

June 1, 1926.

This proceeding was brought for the purpose of testing the legality of the incorporation of the Town of Ojus, Florida.

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*Taliaferro & Morris, Tampa, Fla.*

July 10, 1926.

This proceeding was brought to test the legality of the appointment of pilots for the County of Pinellas, Florida.

---

*Palmer, Dickenson & Shurley, Tampa, Fla.*

July 26, 1926.

This proceeding was brought to test the validity of the incorporation of the Town of Safety Harbor.

---

*Hon. S. K. Gillis, DeFuniak Springs, Fla.*

August 4, 1926.

This proceeding was brought for the purpose of testing the right of a certain party to hold the office of County Commissioner, District No. 4, Walton County, Florida.

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*Messrs. Dame & Rogers, Fort Pierce, Fla.*

August 12, 1926.

This proceeding was brought to test the right of certain parties to use, enjoy, exercise and perform the functions and powers and office of Supervisors of North St. Lucie River Drainage District.

---

*Mr. Thomas E. Walker, Marianna, Fla.*

September 4, 1926.

This proceeding was instituted to test the validity of an election held in Jackson County for the purpose of consolidating the Special Tax School Districts.



*Messrs. Stokes & Phillips, Panama City, Fla.*

October 8, 1926.

This proceeding was brought to test the right of a certain party to hold the office of City Commissioner of Lynn Haven, Florida.

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*Messrs. Taliaferro & Morris, Tampa, Fla.*

November 3, 1926.

This proceeding was brought to test the right of certain pilots of Tampa Bay and Bar for the Port of St. Petersburg to use, perform, exercise, and enjoy the rights, powers, liberties, privileges and franchises granted such pilots.

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*Messrs. Tedder & Sellers, Fort Lauderdale, Fla.*

November 4, 1926.

This proceeding was brought to test the right of the Town Clerk and Tax Assessor of the Town of Deerfield to hold such office.

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*Messrs. Evans & Mershon, Miami, Fla.*

November 12, 1926.

This proceeding was brought for the purpose of testing the validity of the incorporation of the Town of Ojus.

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*Messrs. Tedder & Sellers, Fort Lauderdale, Fla.*

November 29, 1926.

This proceeding was filed in the Circuit Court of Broward County in an effort to test the right of certain town officials of the Town of Deerfield to hold office.

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*Messrs. Hawthorne & Hunt, Miami, Fla.*

December 10, 1926.

This proceeding was brought for the purpose of testing the validity of the incorporation of the Town of South Miami.

*Mr. R. S. Field, Orlando, Fla.*

December 13, 1926.

This proceeding was brought for the purpose of testing the validity of the incorporation of the Town of Bithlo.

TABULATED REPORT OF CRIMINAL CASES HANDLED BY THE ATTORNEY GENERAL  
IN WHICH OPINIONS WERE FILED BY THE SUPREME COURT DURING THE  
YEARS 1925 AND 1926.

CASES DISPOSED OF DURING JANUARY TERM, 1925.

Name of Offender	Offense	County	Court	Disposition
Alford, Perry	Murder 2d Degree	Columbia Bay	Circuit	Dismissed
Andrews, K. A.			Circuit	Dismissed
Billings, Orison and Cubbedge, Herman	Kidnapping	St. Johns	Circuit	Affirmed
Bell, Charlie	Habeas Corpus	Gadsden	Circuit	Reversed
Blackwelder, E. H.	Habeas Corpus	Volusia	Circuit	Affirmed
Bryant, Walker	Burning Building	DeSoto	Circuit	Affirmed
Burns, Daniel	Breaking and Entering	Jackson	Circuit	Affirmed
Burns, Geo. F.	Murder	Volusia	Circuit	Affirmed
Bush, Crosby and Bass, Sam	Unlawfully Entering Bldg.	Orange	Criminal	Dismissed
Chapman, Jack	Perjury	Walton	Circuit	Dismissed
Clark, E. D.	Habeas Corpus	Duval	Circuit	Dismissed
Collins, Calvin	Manslaughter	Hillsborough	Circuit	Affirmed
Cox, George	Burning Building	DeSoto	Circuit	Affirmed

# CASES DISPOSED OF DURING JANUARY TERM, 1925—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Cross, James G. ....	Manslaughter .....	Nassau	Circuit	Affirmed
Gay, H. A. ....	Assault with Intent to Murder	Jackson	Circuit	Dismissed
Hall, A. L. ....	Murder 2d Degree .....	Calhoun	Circuit	Affirmed
Hart, G. L. ....	Violation Liquor Law .....	Pinellas	Circuit	Reversed
Hogan, H. H. ....	Disbarment .....		Circuit	Reversed
Holley, Estelle .....	Manslaughter .....		Circuit	Affirmed
Holmes, R. L. ....	Manslaughter .....		Circuit	Affirmed
James, Isadore .....	Murder .....		Circuit	Reversed
Johnson, Theodore .....	Habeas Corpus .....		Circuit	Reversed
Keen, E. N. ....	Murder 2d Degree .....		Circuit	Reversed
Langford, J. M. ....	Larceny .....		Circuit	Reversed
May, George .....	Assault to Murder .....		Criminal	Reversed
Meyer, Fred .....	Murder 1st Degree .....		Circuit	Affirmed
Ming, Oscar .....	Murder 1st Degree .....	Bay	Circuit	Reversed
Mosley, Quince and Mosley, T. E. ....	Aggravated Assault .....	Walton	Circuit	Affirmed
McCray, Tom .....	Murder 2d Degree .....	Broward	Circuit	Reversed
McGowan, Leo .....	Murder 1st Degree .....	Columbia	Circuit	Affirmed
Patterson, F. P. ....	Mfg. Intoxicating Liquor .....	Taylor	Circuit	Dismissed

# CASES DISPOSED OF DURING JANUARY TERM, 1925—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Sealey, Otto	Murder 1st Degree	Columbia	Circuit	Affirmed
Sears, O. M.	Assault and Battery	LaFayette	Circuit	Affirmed
Shannon, Arthur	Murder 2d Degree	Marion	Circuit	Reversed
Stephens, N. and Bike, B.	Receiving Stolen Goods	Duval	Criminal	Reversed
Streeter, H. J.	Bribery	Duval	Criminal	Reversed
Taylor, Mal and Johnson, Nathan C.	Murder 1st Degree	Suwannee	Circuit	Affirmed
Valentin, Bartolo	Murder 2d Degree	Hillsborough	Circuit	Dismissed
Williams, Annie May	Manslaughter	LaFayette	Circuit	Affirmed



# CASES DISPOSED OF DURING JUNE TERM, 1925.

Name of Offender	Offense	County	Court	Disposition
Adams, W. M. ....	Manslaughter .....	St. Johns	Circuit	Dismissed
Armantrout, J. R. ....	Murder 1st Degree .....	Santa Rosa	Circuit	Dismissed
Asher, W. R. ....	Murder 1st Degree .....	Dade	Circuit	Affirmed
Blocker, Bozy .....	Assault to Commit Murder .....	Santa Rosa	Circuit	Affirmed
Crosby, Carl .....	Embezzlement .....	Walton	Circuit	Affirmed
Davis, Jack M. ....	Manslaughter .....	Okeechobee	Circuit	Reversed
Davis, Marion, et al .....	Breaking and Entering .....	Duval	Criminal	Affirmed
Davis, Marion and Young, John .....	Breaking and Entering .....	Duval	Criminal	Affirmed
Driggers, George .....	Altering Marks .....	Dixie	Circuit	Affirmed
Driggers, Willard .....	Altering Marks .....	Dixie	Circuit	Affirmed
Dunaway, Joe .....	Murder 2d Degree .....	Escambia	Circuit	Affirmed
Edenfield, W. E. ....	Manslaughter .....	Jackson	Circuit	Affirmed
Ferguson, Fortune .....	Rape .....	Alachua	Circuit	Affirmed
Hall, Doyle .....	Burning House .....	Lee	Circuit	Reversed
Hancock, Frances .....	Assault to Commit man- slaughter .....	Dade	Criminal	Affirmed
Johnson, Ed .....	Incest .....	Santa Rosa	Circuit	Affirmed
Kahoute, Herman .....	Selling Liquor .....	Walton	Circuit	Dismissed

# CASES DISPOSED OF DURING JUNE TERM, 1925—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Killingsworth, C. C. ....	Robbery .....	Hillsborough	Criminal	Affirmed
Lamb, John J. ....	Murder 1st Degree .....	Manatee	Circuit	Affirmed
Lowe, Nathan .....	Murder 1st Degree .....	Columbia	Circuit	Affirmed
Meier, William .....	Manslaughter .....	Duval	U. S. Sup.	Dismissed
McLendon, Chester .....	Murder 1st Degree .....	Palm Beach	Circuit	Reversed
Nickels, Aubrey Lee .....	Rape .....	Volusia	Circuit	Reversed
Oats, Martha .....	Manslaughter .....	Calhoun	Circuit	Affirmed
Parrish, T. J. ....	Aiding Prisoners Escape .....	Duval	Criminal	Affirmed
Peterson, Charles .....	Assault to Rape .....	Escambia	Ct. of Rec.	Affirmed
Roberts, J. F. ....	Manslaughter .....	Levy	Circuit	Affirmed
Sanford, Chas. E. ....	Manslaughter .....	Dade	Criminal	Affirmed
Shumake, Charlie .....	Shooting Into Vehicle .....	Washington	Circuit	Affirmed
Smith, Isaac .....	Breaking and Entering .....	Duval	Criminal	Affirmed
Tucker, Talbert and Elliott	Receiving Stolen Property ..	Orange	Criminal	Reversed
Walker, A. D. and Davis, Clarence .....	Receiving and Concealing Auto .....	Hillsborough	Criminal	Affirmed
Whitehead, Elbert and Eldredge .....		Liberty	Circuit	Dismissed

# CASES DISPOSED OF DURING JANUARY TERM, 1926

Name of Offender	Offense	County	Court	Disposition
Best, Mathew	Violating Prohi. Law	Orange	Criminal	Dismissed
Brain, Julian	Murder 2d Degree	Dade	Criminal	Affirmed
Brandamour, H. F.	Habeas Corpus	Martin	County	Pet'r Dis- charged
Brown, Willie	Murder 1st Degree	Duval	Circuit	Affirmed
Cannon, Bessie	Manslaughter	Palm Beach	Circuit	Reversed
Carroll, Howard	Habeas Corpus	Palm Beach	Circuit	Affirmed
Carroll, Howard	Habeas Corpus	St. Lucie	Circuit	Affirmed
Dalton, Milton	Habeas Corpus	St. Lucie	Circuit	Affirmed
Davis, Broward	Murder 1st Degree	Calhoun	Circuit	Affirmed
Davis, Will	Murder 2d Degree	Dade	Circuit	Dismissed
Douglass, Will	Murder 1st Degree	Duval	Circuit	Dismissed
Ellison, Maude	Murder 1st Degree	Duval	Circuit	Affirmed
Gayle, Preston	Habeas Corpus	Duval	Circuit	Affirmed
Goebel, John	Habeas Corpus	Dade	Circuit	Affirmed
Goodyear, Laura	Habeas Corpus	Duval	Circuit	Dismissed
Harrison, Richard	Habeas Corpus	Alachua	Circuit	Affirmed
Johnson, A. C.	Confiscation of Boat	Manatee	Circuit	Affirmed
Jones, S. M.	Habeas Corpus	Dade	Circuit	Affirmed

# CASES DISPOSED OF DURING JANUARY TERM, 1926—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Marshall, J. L. and Atkins, Joe		Sarasota	Circuit	Dismissed
Milton, Forest	Manslaughter	Duval	Criminal	Affirmed
Minger, W. C.	Forgery	Holmes	Circuit	Affirmed
Nesle, Charles H.	Habeas Corpus	Palm Beach	Circuit	Dismissed
Passett, Issadore	Habeas Corpus	Dade	Circuit	Reversed
Porter, Duke	Possessing Liquors	Jackson	Circuit	Judgment Quashed
Potter, Henry, et al.	Breaking and Entering	Jackson	Circuit	Reversed
Peck, Joseph E.	Habeas Corpus	Dade	Circuit	Reversed
Pennington, Jeff, et al.	Murder 1st Degree	Holmes	Circuit	Affirmed
Roberts, Frank	Murder 1st Degree	Taylor	Circuit	Affirmed
Russell, Jim	Murder 1st Degree	Taylor	Circuit	Reversed
Smith, A. E.	Violating Chap. 10233	Dade	Circuit	Reversed
Smith, Louis I.	Habeas Corpus	Dade	Circuit	Dismissed

# CASES DISPOSED OF DURING JUNE TERM, 1926

Name of Offender	Offense	County	Court	Disposition
Anderson, Elmer R. -----	Murder 1st Degree -----	Marion	Circuit	Reversed
August, Joseph L. -----	Obtaining Money Under False Pretenses -----	Dade	Criminal	Reversed
Batton, Gid and Jones, Austin, -----	Cruelty to Animals -----	Escambia	Ct. Rec.	Dismissed
Berry, I. W. -----	Breaking and Entering -----	Jackson	Circuit	Dismissed
Blocker, L. S. -----	Murder 2d Degree -----	Dade	Circuit	Affirmed
Brown, Charles -----	Murder -----	Volusia	Circuit	Affirmed
Brown, I. W. -----	Manslaughter -----	Polk	Circuit	Reversed
Brown, Harris -----	Embezzlement -----	Dade	Criminal	Reversed
Camp, R. J. -----	Habeas Corpus -----	Orange	Criminal	Remanded
Campbell, Mathis -----	Perjury -----	Escambia	Ct. Rec.	Affirmed
Campbell, Mathis -----	Re-hearing -----	Escambia	Ct. Rec.	Reversed
Carver, R. B. -----		Dade	Criminal	Dismissed
Chesser, Rufus -----	Murder 1st Degree -----	Clay	Circuit	Affirmed
Conrad, A. H. -----	Habeas Corpus -----	Escambia	U. S. Dis.	Remanded
Griner, B. L. and Siever, H. G. -----	Obtaining Money Under False Pretenses -----	Orange	Criminal	Reversed



# CASES DISPOSED OF DURING JUNE TERM, 1926—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Davis, Jess	Larceny	Highlands	Circuit	Reversed
Donaldson, J. F.	Embezzlement	Escambia	Circuit	Affirmed
Douglass, Floyd		Polk	Criminal	Dismissed
Ellis, Abram	Manslaughter	Dade	Criminal	Affirmed
Ellis, Ora	Certiorari	Pinellas	Circuit	Quashed
Fountain, Jerome	Grand Larceny	Volusia	Circuit	Affirmed
Frier, Theodore	Manslaughter	Lafayette	Circuit	Affirmed
Fuller, T. E.	Murder 2d Degree	Dade	Circuit	Reversed
Gilis, Angus	Vio. Real Estate Lic. Law	Broward	Circuit	Affirmed
Gillis, J. A.	Shooting into auto	Holmes	Circuit	Affirmed
Gillis, Tom		Dade	Criminal	Dismissed
Grant, Hugh	Breaking and Entering	Marion	Circuit	Reversed
Green, Ben	Assault and Battery	Clay	Circuit	Dismissed
Hand, C. P.		Glades	Circuit	Dismissed
Hart, H. O.	Rec. Stolen Goods	Broward	Circuit	Reversed
Hyman, Merton	Murder 2d Degree	DeSoto	Circuit	Affirmed
James, Cecil	Highway Robbery	Dade	Criminal	Affirmed
Johnson, Lucie	Violating Liquor Law	Pinellas	Circuit	Affirmed
Joyner, John	Violating Liquor Law	Sarasota	Circuit	Reversed

# CASES DISPOSED OF DURING JUNE TERM, 1926—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Kirkland, Dave	Forgery	Walton	Circuit	Affirmed
Lampkin, Sylvester	Murder 2nd Degree	Lee	Circuit	Dismissed
Lanz, Katie	Habeas Corpus	Duval	Circuit	Affirmed
Lee, Mary	Murder 1st Degree	Calhoun	Circuit	Reversed
Midyette, Arlin		Dade	Criminal	Dismissed
Miller, Coen	Assault to Murder	Manatee	Circuit	Dismissed
Newsome, Nep		Hillsborough	Criminal	Dismissed
Osborn, John S.		Holmes	Circuit	Dismissed
Osteen, Raymond L.	Manslaughter	Suwannee	Circuit	Rehearing Granted
Pappas, Louis and Drivas, Gus	Rec. Stolen Property	Hillsborough	Criminal	Affirmed
Reed, Lula		Dade	Criminal	Dismissed
Reynolds, Stephens F.	Violation Liquor Law	Polk	Criminal	Affirmed
Smith, E. L.		Dade	Criminal	Dismissed
Smith, W. A.	Manslaughter	Holmes	Circuit	Affirmed
Smith, W. N.	Violating Real Estate Law	Broward	Circuit	Affirmed
Stephens, M. Y.	Robbery	Duval	Criminal	Affirmed

# CASES DISPOSED OF DURING JUNE TERM, 1926—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Tracy, Joe and Upthegrove, E. W. -----		Hamilton	Circuit	Dismissed
Wade, W. H. -----	Habeas Corpus -----	St. Lucie	Circuit	Reversed
Washington, Abe -----	Habeas Corpus -----	Duval	Circuit	Affirmed
Ward, F. G. -----		Dade	Criminal	Dismissed
White, E. E. -----	Habeas Corpus -----	Escambia	Circuit	Affirmed
Williamson, Bud -----	Murder 2d Degree -----	Okaloosa	Circuit	Affirmed
Williamson, Ed -----	Aggravated Assault -----	Walton	Circuit	Affirmed
Williams, J. B. -----		Dade	Criminal	Dismissed
Williams, Jim -----	Murder 1st Degree -----	Putnam	Circuit	Affirmed
Williams, J. H. -----	Injuring Property -----	Taylor	Circuit	Affirmed
Williams, J. P. -----	Carnal Intercourse -----	Jackson	Circuit	Affirmed

OFFICIAL OPINIONS

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The following are opinions which may be of interest to the public generally:

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## LEGISLATURE—MEMBER OF—VACANCY

January 15, 1925.

*Dr. Fons A. Hathaway,*  
*Secretary to the Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

Replying to your letter of January 14th, enclosing letter from Dr. C. L. Carter of Wildwood, Florida, to Governor Martin, I beg to say in cases where a person elected in a County as representative from such County removes from such County, with the intention to abandon the same as his domicile, the office of member of the Legislature to which such person shall have been elected becomes vacant and may only be filled by a Special Election ordered by the Governor to be held in the County for that purpose.

Very truly yours,

RIVERS BUFORD

Attorney General

## CORPORATIONS—EXERCISE OF TRUST FUNCTIONS

January 31, 1925.

*Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.*

Dear Sir:

I have examined the proposed amendments to the Charter of the St. Johns Abstract and Title Company, together with the accompanying letter from Mr. W. W. Dewhurst.

In my opinion, the laws of this State prohibit the exercise of trust functions by corporations other than those incorporated as provided by Sections 4183 to 4201, both inclusive, of Revised General Statutes.

That such prohibition was intended by the Legislature is apparent from Chapter 8531, Laws of Florida, Acts of 1921, as amended by Chapter 9287, Laws of Florida, Acts of 1923.

The proposed amendments in question seek to authorize the corporation in question to exercise trust functions and to act in a fiduciary capacity generally, and to grant it all the rights, powers, and benefits of a fiduciary, free from the restrictions, liabilities, and duties imposed upon such corporate fiduciaries by the provisions of the statutes above named.

The proposed amendments are for purposes not authorized by law to such corporations.

Very truly yours,

RIVERS BUFORD

Attorney General



LUMBER INSPECTORS—APPOINTMENT, QUALIFICATIONS AND DUTIES

February 11, 1925.

*Hon. Fons A. Hathaway,  
Secretary to Governor,  
Tallahassee, Fla.*

Dear Sir:

In reply to your letter of the 11th instant, I beg to refer you to Sections 2381 to 2383, Revised General Statutes, both inclusive, which constitute the statutes relating to the appointment of Inspectors of Timber and Lumber, and which prescribe the duties of such Inspectors. Said Sections read as follows, to-wit:

**"2381. APPOINTMENT AND REMOVAL OF INSPECTORS.**—It shall be the duty of the Governor to appoint a sufficient number of timber and lumber inspectors in each County of the State, who shall hold their offices for four years, subject to removal by the Governor for good cause shown, and the said inspectors shall receive the compensation and be subject to the rules now prescribed by law.

**"2382. INSPECTORS TO QUALIFY AND GIVE BOND.**—Such inspectors shall qualify and give bond in the sum of five hundred dollars before he shall be commissioned, in like manner, and said bond to be approved in like manner, as is provided by general law concerning the qualifying and bonds of County officers.

**"2383. DUTIES OF INSPECTORS.**—When any person shall desire the attendance and service of any such inspectors of lumber, he shall give notice and inform all parties concerned and interested, of his intention of calling in the aid of such inspector, at least three days previous to the time when he shall require said inspector to inspect and measure the lumber in question; and it shall be the duty of the inspector, when summoned, to attend at the place and the day to

which he may be called, and faithfully measure all lumber he may be required to do, and any report and return he may make concerning thereof shall be received as the correct measurement of the same: Provided, nevertheless, that the several parties interested may, at all times, be at liberty to establish the incorrectness of such return and report, in any suit regularly commenced in any court of this state having jurisdiction of the same."

Yours very truly,

RIVERS BUFORD

Attorney General

#### CITIZENSHIP—RESTORATION OF

February 13, 1925.

*Hon. Fons A. Hathaway, Secretary,  
State Board of Pardons,  
Tallahassee, Fla.*

Dear Sir:

Replying to your request of February 12th, that I advise you how Charlie Walker should proceed to have his citizenship restored, I beg to say:

Citizenship is restored in the same manner and by the same method as that under which pardons are granted. I hand you herewith copy of Rules of the State Board of Pardons of Florida, as issued by the State Prison Department in 1921.

I am returning herewith letter from Charlie Walker to Governor Martin.

Yours very truly,

RIVERS BUFORD

Attorney General

STATE OFFICE—INCUMBENT PROHIBITED FROM  
HOLDING TWO

February 16, 1925.

*Hon. John W. Martin,*  
Governor,  
*Tallahassee, Fla.*  
Dear Sir:

Complying with your request that I render you my opinion, as Attorney General of Florida, as to whether or not, under existing statutes and Constitution of the State of Florida, one and the same person may be appointed to and hold the office and exercise the functions of Food, Drug and Fertilizer Inspector for the Chemical Division of the Department of Agriculture of the State of Florida, and at the same time hold the office and exercise the functions of Oil Inspector of the State of Florida, I beg to say:

Section 15, of Article 16, of the Constitution of Florida is as follows:

"No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold, any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; Provided, Notaries Public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office."

And from which provision you will observe that:

"No person shall hold or perform the functions of more than one office under the Government of this State at the same time."

The office of Food, Drug and Fertilizer Inspector for the

Chemical Division of the Department of Agriculture of the State of Florida is a definite official position under the law of this State. The appointment of such officers is authorized by Section 179 of the Revised General Statutes of Florida; the duties of such officers are fixed by Sections 180 and 181 of the General Statutes of Florida; the compensation of such officers is fixed by Section 182 of the Revised General Statutes of Florida, and an annual appropriation for the payment of this compensation and other expenses is fixed by Section 187 of said Revised General Statutes of Florida.

The Governor is authorized to appoint 4 such inspectors; the term of office being for four years.

It will be necessary to refer to records in the office of the Secretary of State to ascertain the date upon which the terms of such officers heretofore appointed have expired, or shall hereafter expire.

The position of Oil Inspector is a definite official position under the laws of the State of Florida, and is created by Chapter 7905, Acts of 1919. The compensation and duties of such officers are fixed by said Chapter, and it is therein provided that a tax for the inspection of oil and gasoline shall be collected by the Commissioner of Agriculture which shall be by him paid to the State Treasurer, and out of which all expenses incurred in the enforcement of the Act shall be paid by the State Treasurer on warrants issued by the Comptroller. The Act further provides that no funds shall be paid from any other source for the expense of this Department.

The legislature of 1923, it appears, attempted to consolidate the two positions above referred to by including in the General Appropriation Bill an appropriation of \$7,200.00 for the salary of 4 Feed, Drug, Fertilizer and Oil Inspectors, and also including an appropriation of \$6,000.00 for the traveling expenses of such Inspectors.

Section 30 of Article 3 of the Constitution is as follows:

"Laws making appropriations for the salaries of public



officers and their current expenses of the State shall contain provisions on no other subject."

Therefore, it is obvious that the Legislature was not competent to amend by inference, or otherwise, the Sections of the Revised General Statutes above referred to, or to amend Chapter 7905, Acts of 1919, by the insertion of items in the Appropriation Bill.

In consideration of the above stated conditions, it is my opinion that there has existed no constitutional authority for the appointment of one and the same person to, at one and the same time, hold the office and exercise the functions of both a Food, Drug and Fertilizer Inspector of the Chemical Division of the Department of Agriculture of the State of Florida, and that of Oil Inspector of the State of Florida; that such appointments are contrary to the provisions of Section 15 of Article 16 of the Constitution of Florida, and that each of such offices, the compensation and duties thereof, is controlled by the provisions of the separate statutes above referred to and applying to the same.

Yours very truly,

RIVERS BUFORD

Attorney General

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STATE OFFICE—CONSTABLE NOT QUALIFIED TO  
HOLD

April 27, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

I have your request that I advise you whether or not a Constable may at the same time occupy the position of Deputy Shell Fish Commissioner.

It is my opinion under the provisions of our Constitution



prohibiting any person from holding or exercising functions of more than one office at one and the same time precludes one from holding the office of Constable and at the same time holding that of Deputy Shell Fish Commissioner.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

### CIRCUIT JUDGE—DISPOSITION OF WHISKEY

May 19, 1926.

*Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you what disposition may be made of 1,300 cases of good imported whiskey, alleged to be held in Jail at Titusville, Florida, I beg to say under the law this whiskey, can only be disposed of in accordance with such order as may be made by the Circuit Judge of the Circuit in which the whiskey has been seized and it is, therefore, not a matter in which Your Excellency is authorized to interpose any Executive Authority however much you might be inclined to render assistance to the Gordon Keller Hospital, of Tampa, Florida, which has requested your assistance in this matter.

I herewith return letter written by Mr. T. F. Alexander, Chairman Board of Directors, to you under date of May 11th, 1925.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

# HIGH SCHOOL PRINCIPAL AND TEACHERS —NOMINATION

June 6, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

I have your request that I advise you in regard to the matter mentioned in letter under date of May 27th, written by Rev. Ivor G. Hyndman, of St. Cloud, Florida.

The law provides that the Trustees of a High School have the right to nominate the principal and teachers. If the first nomination is refused by the County Board of Public Instruction, then the Trustees have the right to nominate a second choice and if this is refused, then the County Board of Public Instruction has the right to make the nomination on its own motion. See Section 569 of the Revised General Statutes of Florida.

Yours very truly

RIVERS BUFORD,  
Attorney General.

## JUSTICE OF THE PEACE—JURISDICTION

June 23, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

I have your request that I advise you in regard to matters mentioned in letter addressed to you by Hon. W. J. Watrous, of Key West, Florida, under date of June 17th.

If Mr. Watrous had been enough interested in his case to

employ counsel to represent him in Court it would have hardly been necessary for him to call upon you to advise him concerning the rights of a Justice of the Peace.

A Justice of the Peace has no final trial jurisdiction in Counties in which there is established a County Court or a Criminal Court of Record. His criminal jurisdiction in such Counties is that of a Committing Magistrate. A justice of the Peace who assumes to exercise such final trial jurisdiction under such circumstances is guilty of malfeasance in office.

A Constable is authorized to serve a writ placed in his hands anywhere within the jurisdiction of the Court issuing the writ and in criminal cases a Constable may serve a warrant at any place within the County in which he holds office and may exercise such functions as may be exercised by a sheriff outside of that County. If a party is unlawfully held under arrest, his remedy is *habeas corpus*.

I am returning herewith letter transmitted by you.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BUDGET COMMISSION — LIMITATIONS OF — TELEPHONE ENGINEER MAY HOLD POSITION  
OF INSPECTING ENGINEER

July 21, 1925.

Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.  
Dear Sir:

I have your letter of the 17th enclosing letter from R. Hudson Burr to you, and in reply I beg to say:

I advised Mr. Burr that it was and is my opinion that the

Budget Commission has no authority in regard to the expenditure of appropriations. Its only authority is to recommend to the Legislature the amounts which should be provided for in appropriations.

In conversation with Mr. Burr, I suggested that if the Telephone Engineer was qualified to do the work of an Inspecting Engineer, and had the time to do some of such work in addition to his services as Telephone Engineer, that there is no cause from a legal standpoint why the Commission could not pay him the salary stipulated in the appropriation bill as Telephone Engineer and supplement this salary by an additional amount in compensation for his services as Inspecting Engineer, and I advise you that this may lawfully be done. The same course is pursued and has been pursued for a number of years by the Board of Control in procuring the services of and paying compensation to certain highly technical employees whose services the Board could not otherwise procure.

This is the only practical method I see by which the result desired by the Railroad Commission can be obtained.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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COUNTY OFFICER PROHIBITED FROM CONDUCTING  
PRIVATE BUSINESS IN PUBLIC BUILDING

July 21, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

Replying to yours of the 17th, to which is attached a letter from Judge W. A. McLeod, of Milton, I beg to state

that I received an identical letter from this party, and my answer to him was as follows:

"Replying to yours of the 14th instant, it is my opinion that no County Officer has the right to conduct a private business office in any public building of the County."

Yours very truly,

RIVERS BUFORD,  
Attorney General.

# STATE—WHEN JUDGMENT AGAINST, VOID

July 23, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

I am returning herewith letter addressed to you from Hon. H. L. Anderson *in re* judgment in Hillsborough County against Norman Smith.

It is my opinion that no State Official has authority to bind the State in any suit in which the State may be a defendant, and that any judgments or decrees entered against the State, except in suits which may be authorized by the Legislature, are null and void, and for this reason I can not consistently assume to enter an appearance on behalf of the State in the action contemplated by Mr. Anderson.

Yours very truly,

RIVERS BUFORD,  
Attorney General.



## INQUESTS—BY WHOM SHOULD BE HELD

August, 11, 1925.

*Hon. John W. Martin,*  
Governor,  
*Tallahassee, Fla.*  
Dear Sir:

Replying to your request that I advise you in regard to letter received by you from Hon. D. H. Brown, Justice of the Peace, Carbur, Florida, under date of August 7th, I beg to say:

An inquest may be held by either a County Judge or a Justice of the Peace in all cases where it appears to such officer that an inquest is necessary. In many cases an inquest is merely a matter of unnecessary form and puts the County to unnecessary expense. If a homicide occurs and all the facts are generally known and the officers can immediately procure all the witnesses, there is nothing to be gained by the holding of an inquest. In such cases the officers should cause warrants to be issued and hold preliminary hearing and bind all material witnesses over to await the action of the Grand Jury if the facts warrant a Grand Jury investigation. If there is any doubt in the minds of the officers in regard to the facts in the homicide and if there is any reason to believe there is any disposition to conceal or distort facts, an inquest should be immediately held and record of available testimony preserved. It is usually best for the inquest to be held by the County Judge because of his wider experience in such matters and also because of his availability for assistance to the State's Attorney when the matter goes to the Circuit Court for investigation.

Yours very truly,

RIVERS BUFORD,

Attorney General.

## COUNTY OFFICE—VACANCY

August 24, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

I have your letter of August 22nd attaching letter from Messrs. Blackwell & Donnell, of West Palm Beach, Florida, with reference to the status of Honorable Edward Mapp as a member of the County Board of Public Instruction of Palm Beach County, which I herewith return.

Under the facts stated in the letter above referred to the office of Member of the County Board of Public Instruction of Palm Beach County, held by Mr. Mapp, became vacant automatically upon the creation of Martin County with Mr. Mapp residing within the territorial boundaries of that County.

This office has heretofore advised Messrs. Blackwell & Donnell the Attorney General's opinion in regard to this matter. This letter of advice, however, was written after the date of the letter to you from these gentlemen.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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AUTOMOBILE TRUCK—MIRROR

September, 19, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

Replying to your inquiry of September 17th, with which you transmit letter, under date of September 14th, addressed

to you by Clark & Lewis of Jacksonville, Florida, I beg to say:

Paragraph 2 of Section 1 of Chapter 9156, Acts of 1923, requires each truck operated on the public highways to be equipped with a mirror so located as to show the driver thereof the approach of vehicles from the rear. Section 3 of the same Act fixes the penalty for the violation thereof.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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CONSTABLE, SPECIAL—WHEN JUSTICE OF PEACE  
AUTHORIZED TO APPOINT

September 23, 1925.

*Hon. John W. Martin.*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

Replying to your letter of September 21st, with which you submit letter from L. H. Jernigan, of Freeport, Florida, I beg to say:

A Justice of the Peace is only authorized to appoint a Special Constable where it is necessary to have a paper served or an officer to officiate in his Court and only then, when the services of the Regular Constable, a Sheriff or a Deputy Sheriff can neither be had. There is no such position as Deputy Constable.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

## PRISONER—ARREST OF

October 3, 1925.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
 Dear Sir:

I have your request that I advise you whether or not you have authority to appoint T. B. Johns a Special Officer to make the arrest of one Horace W. Ryals.

It is my opinion that the Governor is not authorized to appoint Special Officers for the purpose of making arrests.

It is further my opinion that the status of Horace W. Ryals is that of a State Prisoner running at large and that any Prison Officer has now the authority without any further official action on your part to arrest and return him to the Prison.

Yours very truly,

RIVERS BUFORD,

Attorney General.

## ATTORNEY GENERAL—RESIGNATION OF

December 4, 1925.

*Hon. John W. Martin.*  
*Governor,*  
*Tallahassee, Fla.*  
 Dear Governor:

I hereby tender to you my resignation as Attorney General of Florida.

In resigning I wish to say that I have appreciated being a member of your official family, and it is with some degree of sorrow that I sever this most pleasant connection and I only do so because I am offered the opportunity to serve in an-

nother sphere both your administration and the people of the State of Florida.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

# INDUSTRIAL PLANTS—OPERATING FUND

January 30, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*The Capitol,*  
*Tallahassee, Fla.*  
Dear Sir:

I am in receipt of your favor of the 27th inst. as follows:

“As per the instructions of the Board of Commissioners of State Institutions, held on the 26th instant, I am referring to you State Warrant No. 54545, which covers printing done for the office of the State Treasurer by the Printing Plant at the Florida Industrial School for Boys. Kindly advise me what disposition I should make of this warrant.”

with the above mentioned warrant attached.

Chapter 10271 of the Acts of 1925 made an appropriation of \$250,000 for the establishment, construction and maintenance of industrial plants at the State Institutions enumerated in said Act. You will note that this appropriation is confined in its use to the thorough investigation as to whether it would be advisable or economical to operate these plants and for the establishment, construction and maintenance of the plants. The Legislature also made appropriations for having certain work done, including printing in the several departments. It might be stretching the meaning of the word “maintenance” if we should include under that term the operating expenses. If the industrial plants are to be operated,



and if the Board of Commissioners of State Institutions are to be in a position where they can say that it is economical to operate them, then some kind of an accounting and system of operation will have to be inaugurated and maintained.

This act further provides that such plants, as far as practical, are to be operated by the inmates of such institutions under such rules and regulations as may be prescribed by the Board of Commissioners of State Institutions.

It is my opinion that warrants of the class of Warrant No. 54545 attached to your letter should be credited to a fund which might be designated: "OPERATING FUND—INDUSTRIAL PLANTS." You will appreciate that if a number of these plants are placed in operation we would have to have funds with which to purchase raw materials and other materials used in the operation of said plants. Otherwise, the plants might not be able to continue in operation. I would, therefore, suggest, that these warrants be placed to the credit of a fund known as "OPERATING FUND—INDUSTRIAL PLANTS."

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### DRUG ADDICTS—COMMITMENT

February 15, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
My Dear Governor:

I am in receipt of the letter to you written by Judge B. W. Ketchum, dated February 5th, as follows:

"Some time since I had occasion to commit a person addicted to the use of morphine, after due examination in which

two members of the medical profession held him unfit to be at large.

"I proceeded under Section 10190 of, the Acts of the 1925 Session and ordered the commitment to the Florida Farm Colony for Epileptics and Feeble Minded, at Gainesville, as provided in this Act.

"He was returned by the authorities there who refused to accept him on the ground that no provision had been made heretofore for the handling of such cases at this institution.

"Chapter 10190 does not repeal, specifically, Sections 2317-2320 of the Revised General Statutes, and I would appreciate it if you would obtain an opinion from the Attorney General as to whether or not proceedings may be still had under the General Statutes of 1920, until the provisions of the 1925 Act have been put into operation.

"A person addicted to the use of narcotics is potentially dangerous to others while at large, and at the same time deserves kindness and attention looking toward a cure if such is possible.

"Is there any possibility that the appropriation made in Chapter 10190 will become available in the near future so that adequate care and attention can be given such cases, and at the same time relieve the various Counties of the responsibility for their care."

I note this person committed to the Florida Farm Colony was refused. The last paragraph of Section 4 of Chapter 10272, Acts of 1925, provides:

"\*\*\*that before any County Judge shall commit a person to the said Institution he shall ascertain from the Superintendent thereof whether or not there are available means then provided at said Institutions to take care of the persons to be committed."

Of course this chapter is dealing with the epileptic and feeble-minded but it would equally apply to drug addicts. Section 2319 of the Revised General Statutes, being Section 3 of the law providing for the commitment of these persons to the Florida Hospital for the Insane provides:

“\*\*\*but, whenever in the opinion of the Board of Commissioners of State Institutions it shall be necessary to restrict the number of admissions of such persons for lack of room or any other reason, said Board may notify by mail the County Judge of each County in this State of that fact, and after such notice no further commitments shall be made here under until said order shall be suspended by said Board of Commissioners of State Institutions.”

Under these provisions the admittance of persons committed can be refused for the reasons provided in the law and above enumerated.

By the passage of Chapter 10190, Acts of 1925, the provisions of the law, providing for the commitment of drug addicts to the Florida Hospital for the Insane, were repealed by implication but will necessarily have to remain in force until the building at the Florida Farm Colony provided for under said Chapter 10190, Acts of 1925, has been constructed and put in condition to take such persons.

Respectfully,

J. B. JOHNSON,  
Attorney General.

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DEATH WARRANT—EXECUTION OF

February 15, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Sir:

I acknowledge receipt of your favor of February 8, 1926, in which you ask that I give you my opinion as to the

proper procedure to be taken in the matter of the death warrant issued by you on January 27, 1926, for the execution of one Abe Washington, convicted in Duval County, at the Fall Term of the Circuit Court, 1922, of the crime of murder in the first degree and sentenced to be hanged.

Section 32 of Article 3 of the Constitution of Florida provides:

"The repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment."

This provision of the Constitution was construed in the case of *Raines v State*, 42 Fla. 141, 28 So. 57.

Under the authority of the above quoted provisions of the Constitution, as construed by the Supreme Court in the case of *Raines v. State*, above mentioned, it is my opinion that the criminal in this case must be punished under the provisions of Section 6124 of the Revised General Statutes of 1920 which provides for the punishment of death by hanging, and, therefor, I advise that a death warrant be prepared and issued under the law as it was at the time the criminal was convicted and sentenced, to-wit: Sections 6124 and 6125 of the Revised General Statutes.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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#### SPECIAL AGENT—APPOINTMENT OF

March 22, 1926.

*Hon. John W. Martin,*  
Governor,  
*Tallahassee, Fla.*  
Dear Sir:

Your favor of the 19th inst. asking that I advise you as to whether or not you would be authorized to appoint one, C.

C. Mathews, employed by Coral Gables, as a Special Agent or Traffic Officer, received.

It appears from the memorandum submitted that Coral Gables is desirous of having Mr. Mathews appointed a State motor-cycle police officer. I know of no provision in the law authorizing such an appointment.

Chapter 8541, Acts of 1921, authorizes the Governor to appoint a Traffic Officer in Counties of more than 80,000 and less than 100,000 population. This would not apply to Dade County as the last census gives Dade County more than 111,000 population. I know of no other law providing for traffic officers.

Chapter 8539 provides that:

"Upon the application of any railroad, express company, or other common carrier, doing business in this State, the Governor shall appoint one or more special officers for the protection and safety of such carriers, their passengers and employees, and the property of such carriers, passengers and employees."

From the memorandum submitted by the Coral Gables Company, I would take it they are undertaking to come under that provision. As I understand it, however, the bus lines operated by the Coral Gables Company would not be termed common carriers, as defined under the Florida law. If this Company can qualify as a common carrier, you would be authorized to appoint for them one or more special agents.

Very truly yours,

J. B. JOHNSON,  
Attorney General.



## HOSPITAL—PRIVATE—ESTABLISHMENT

May 14, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Governor:

Your favor of the 12th inst., with attached letter from Mr. L. G. Kaufman of New York City, dated May 4, 1926, on the subject of establishing a hospital at Palm Beach for the treatment of visitors, has been received.

Section 6 of Chapter 8415, Laws of Florida, Acts of 1921, provides:

“Applications for License: Any person wishing to obtain the right to practice medicine in this State, who has not heretofore been registered or licensed so to do, shall before it shall be lawful for him to practice medicine in this state make application to the Board through the secretary-treasurer thereof, upon such form and in such manner as shall be adopted and prescribed by the Board, and obtain a license from the Board so to do. Unless such person shall have obtained a license as aforesaid it shall be unlawful for him to practice medicine in this State and if he shall practice medicine in this State without first having obtained a license, he shall be deemed to have violated the provisions of this Act. All applicants for a license to practice medicine or for a renewal of any such license which has been revoked shall furnish the Board with evidence of good moral character. Applications from candidates to practice medicine or surgery in any of its branches shall be accompanied with proof that the applicant is a graduate of a legally incorporated medical college or institution in good standing with the Board.”

Section 15 of Chapter 8415 provides a penalty for anyone violating any of the provisions of this Chapter.

If such hospital should be established, the medical staff

would have to secure license to practice in Florida or they would have to have a staff of licensed practitioners under the Florida law to get by.

Respectfully,

J. B. JOHNSON,  
Attorney General.

### BOARD OF EQUALIZERS—RIGHT OF

June 18, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Governor:

I am in receipt of your favor of the 17th inst., with enclosure of letter from Mr. J. M. Brownlee, Chairman, Board of County Commissioners of Bradford County, in which Mr. Brownlee asks if the Board of County Commissioners as the Board of Equalizers have the right to make a general raise on all property or if the valuation as fixed by the Assessor is to stand.

Section 725 of the Revised General Statutes reads as follows:

“The board of County Commissioners shall have full power to equalize the assessment of the real estate or personal property in their respective Counties, and for that purpose may raise or lower the value fixed by the County Assessor of taxes on any particular piece of real estate, or item or items of personal property. It shall be unlawful for the County Commissioners to lower the assessment of any personal property given in by the owner or assessed by the assessor, which shall not have been specified under oath. The County Commissioners failing to obey this provision shall be subject to a fine of fifty dollars each, and suspension.”

You will note this Section gives the authority to the County Commissioners to raise or lower the value fixed by the County Assessor. Section 723 of the Revised General Statutes in dealing with the work of the County Commissioners as an Equalization Board provides:

“\*\*\* Should the board increase the value fixed by the County Assessor of taxes of any real estate or personal property, due notice thereof shall be given to the owner or agent of such property by publication in a newspaper published in such County, or by posting a notice at the Courthouse door, if there be no newspaper published in the County, at least fifteen days before the board will be in session, to hear any reason that such persons may desire to give why the valuation fixed by the board shall be changed.\*\*\*”

While it is the purpose of the two Sections quoted to give the County Commissioners the power and authority to equalize taxes yet it is my opinion they would have the authority to raise values where it was clear to them that the values were unreasonably low. I would suggest that the County Commissioners read the two Sections above quoted and follow their provisions as strictly as they can.

I am enclosing an extra copy of this letter in case you may desire to mail same to Mr. Brownlee.

Very respectfully,

J. B. JOHNSON,

Attorney General.

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JUSTICE OF THE PEACE—ABSENCE FROM DISTRICT

July 2, 1926.

*Hon. John W. Martin,*  
Governor,  
Tallahassee, Fla.  
Dear Governor:

Your favor of the 1st inst., with enclosure of letter to you from H. R. Crafton of Malabar, Florida dated June 19th,

with reference to appointing Justices of the Peace, has been received.

I find no specific law covering continued absence of County officials. Before Administrative Officers can absent themselves from the State for a period longer than thirty days they have to notify the Governor in writing and return to the State whenever requested so to do by the Governor; otherwise their office can be declared vacant.

The only law we find with reference to County office is contained in Paragraph 4 of Section 396, Revised General Statutes, which provides: that any office shall be deemed vacant by the incumbent "ceasing to be an inhabitant of the State, District, County, Town or City for which he shall have been elected or appointed."

The Constitution of the State, Section 17 of Article XVI provides:

"No person shall hold any office of trust or profit under the laws of this State without devoting his personal attention to the duties of the same."

Of course, where an officer leaves his duties for an unreasonable length of time he could be removed by the Governor for neglect of duty; this under the provisions of the law quoted. The Governor would not be authorized to appoint officers or Justices of the Peace temporarily as suggested by Mr. Crafton. Before this could be done the Governor would have to make an order, removing the present incumbent and then he could fill such vacancy. The Governor would then be authorized, if he saw fit, and the facts in the case warranted, to reinstate the removed officer.

Very truly yours,

J. B. JOHNSON,

Attorney General.

SUPERVISOR OF REGISTRATION—COMPEN-  
SATION OF

July 7, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Governor:

I am in receipt of your favor of the 6th inst., with letter from Supervisor of Registration, J. W. Davis, inquiring as to the authority of the Board of County Commissioners to furnish additional clerical assistance to properly discharge the duties of the Supervisor of Registration.

On July 3rd I wrote the Supervisor of Registration as follows:

"Your favor of the 1st inst., with reference to compensation of Supervisor of Registration and payment for extra help, has been received.

"The Board of County Commissioners would be authorized to employ whatever clerical assistance they find necessary to properly do the work of the office. The Statute fixes your salary or compensation at \$2400 per year. Of Course, when the work gets too heavy to be performed by one man then the Board of County Commissioners would be authorized to employ whatever additional help is necessary to do the work of the office."

Respectfully,

J. B. JOHNSON,  
Attorney General.



## COUNTY JUDGE—DISQUALIFICATION OF

July 10, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*  
Dear Governor:

Your favor of the 10th inst., with enclosure of letters from Judge W. H. Mapoles, County Judge of Okaloosa County, Florida, dated July 7th and July 8th, advising you that he is disqualified to sit as committing magistrate in cases of the State of Florida vs. R. M. Baggett and Joe Baggett, disqualification on account of relationship, has been received.

We note in Judge Mapole's letter to you of the 8th inst., the following:

“\*\*\* the defendants have agreed to waive their rights in the matter; and as it is only a matter of a preliminary hearing, I have decided that it might be possible to save my taxpayers the extra cost of having you send another Judge to hear this matter,\*\*\*”

A waiver of disqualification in this case by the defendants could not be deemed a waiver as under the law the disqualification would be deemed in their favor. Any waiver of this disqualification would have to be on the part of the State and I know of no one in the preliminary hearing who would be authorized to waive this disqualification on the part of the State. If the defendants would waive preliminary hearing and agree to be bound over to the Grand Jury then that course might be pursued but if there is to be a preliminary hearing it should be had by some Judge or Justice not disqualified by reason of relationship.

If there is a Justice of the Peace in that County then Judge Mapoles could transfer all papers to such Justice of the Peace, who could conduct the preliminary hearing. The County Judge, in conducting preliminary hearings acts as

and has the same jurisdiction of a Justice of the Peace. Section 5998, Revised General Statutes provides:

“In case a Justice of the Peace be disqualified or unable from any cause to try any criminal case, the same may be tried before any other Justice of the Peace of the County or before the County Judge.”

In my opinion this Section would authorize the County Judge to transfer these cases and papers to a Justice of the Peace for hearing.

Unless there is a Justice of the Peace in Okaloosa County, who could act in the matter and unless the defendants would waive preliminary hearing and submit to being bound over to the Grand Jury, it would be advisable for you to send another County Judge over there to hear these cases.

Very respectfully,

J. B. JOHNSON,  
Attorney General.

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BASEBALL—SUNDAY

July 12, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*

Dear Governor:

Your favor of the 10th inst., with enclosure of letter from Judge J. O. Culpepper of Taylor County dated July 6th, with reference to baseball on Sunday, has been received.

Section 5495 of the Revised General Statutes referred to by Judge Culpepper reads:

“That whoever engages on Sunday in any game or sport, such as baseball or football or bowling, as played in bowling

alleys or horse racing, whether as player, manager, director or otherwise, shall be deemed guilty of a misdemeanor and shall be punished by fine not exceeding \$100, or by imprisonment in the County Jail not exceeding three months, or both such fine and imprisonment.'

Under the provision of this Statute, baseball, whether played for profit or for fun, is prohibited. No one would be authorized to write any exception into this Statute. The enforcement of the Statute, of course, is with the local authorities.

Very respectfully,

J. B. JOHNSON,  
Attorney General.

# CIRCUIT COURT JUDGE—DISQUALIFICATION—ASSIGNMENT OF ANOTHER JUDGE

July 13, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*

Dear Governor:

I am in receipt of your favor of the 13th inst., as follows:

In the case of the State of Florida vs. George Scofield, Judge Bullock has been disqualified. I am of the opinion that Scofield should be tried; he has been demanding a trial for a year. Under the law, can't I transfer another Judge to that Circuit and he call a special term of the Court and try that case?"

Section 3056, Revised General Statutes, provides:

"The Judges of the Circuit Courts are authorized to order and hold extra special terms of said Courts whenever

in their judgment the public welfare and the cause of justice require the same; and the order for such special terms may be made either in term time or vacation."

Section 3057, Revised General Statutes, provides:

"Whenever it shall appear to the Governor of this State that any Judge of a Circuit Court is absent from his Circuit and cannot hold the Courts of the same, or is disqualified in any cause pending in said Court, or for any cause cannot properly hear, try and determine the same, the Governor may require an exchange of Circuits or of Courts in any of the Counties of the Circuit between such Judge and any other Judge of a Circuit Court, or may appoint and assign any other of the Judges of the Circuit Court to hold regular or special terms of the Court in such Circuit at such time or times as the Governor may direct."

Under the provisions of Section 3057, in my opinion you would be authorized or have the authority to assign a Judge to hold a special term of the Circuit Court in whatever County the Scofield case is to be tried. I understand that a change of venue was had from Marion County. Of course, as I understand it, the Statute leaves it to your discretion and good judgment.

Incidentally, Section 3058, Revised General Statutes, provides:

"The failure of any Judge to perform the duty required of him by the Governor under the preceding Section shall be cause of impeachment of such Judge."

You will note that Section 3056 provides that Judges of the Circuit Courts are authorized to order and hold extra or special terms of said Courts whenever in their judgment the public welfare and the cause of justice require the same.

If a Judge of a Court is disqualified in a particular case, then it appears that the Governor would be authorized to assign another Judge to hold regular or special term of the

Court in such Circuit at such time or times as the Governor may direct.

Very respectfully,

J. B. JOHNSON,  
Attorney General.

COMMON CARRIER—CHARTER OF—DISCRETION OF  
GOVERNOR

July 15, 1926.

*Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.*

Dear Governor:

I am in receipt of your favor of the 13th inst., with enclosure of letter from the Corporation Service Company of Florida, dated July 10th, with reference to your signing charter for the proposed incorporation of railroad company.

I note from this letter that there has been a protest against the signing of this charter by you or request to be heard in the matter before you sign it.

We appreciate the law that authorizes you to examine the proposed charter and if you find it to be in proper form and for an object authorized by law and due notice has been given that letters patent shall issue but we must not lose sight of the fact that the statute requires notice of intention to apply for letters patent. This notice is undoubtedly to serve some purpose. It is in order that the public generally might be advised of the purposes of the corporation and we take it, to be heard if there are any valid objections against issuing letters patent to the proposed corporation.

It would be impossible for us to classify and say in just what particular instances the Governor might be authorized to withhold letters patent. We are not authorized as to the



grounds of the protest in this case or the reasons given why the charter should not be issued. Facts outside of statutory requirements might warrant the Governor in refusing to grant or sign the charter. I am quite sure it was intended that the Governor should have some discretion in this and that parties at interest might be heard in the matter; otherwise the public notice of the intention to apply for a charter would not have been required by statute.

Not being advised of the facts in this particular case, I see no reason why the charter should not be signed by you and letters patent granted to the applicant. This charter being for a railroad I presume the objections are interposed by other railroad interests. The main question to be considered is service to the public and not the protection of interests of individuals or other corporations.

Respectfully,

J. B. JOHNSON,  
Attorney General.

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## COUNTY JUDGES HAVE JURISDICTION OF VIOLATIONS OF PROHIBITION LAWS

July 16, 1926.

*Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.*

Dear Governor:

Your favor of the 15th inst., with enclosure of letter from Judge J. N. Milton, County Judge, Baker County, Florida, with reference to sentence to be imposed under Chapter 5486, Revised General Statutes, has been received.

The County Judge is given Jurisdiction to try all cases of violation of the liquor laws as to the first offense. This

jurisdiction is given by Section 5487, Revised General Statutes. The penalty imposed for violation is provided by Section 5486.

It would not be proper for your office or this office to undertake to construe Statutes for the judicial officers of the State, including County Judges. An opinion from you or an opinion from me would not be binding on any judicial officer. I would advise the County Judge to consult the Circuit Judge and get his construction of this law.

Respectfully,

J. B. JOHNSON,  
Attorney General.

#### TRAFFIC OFFICER—APPOINTMENT OF

October 15, 1926.

*Governor John W. Martin,  
Tallahassee, Fla.*

My dear Governor:

I am in receipt of your favor of the 14th inst., as follows:

\*“Recently the County Commissioners of Dade County requested me to appoint a Traffic Officer, and recommended the appointment of Frank E. Beavers. They claimed they were entitled to this Traffic Officer, under the law.

“I am attaching hereto a telegram and letter from Beavers regarding the conduct of Sheriff Chase.

“Would you mind looking up the law and giving me your opinion regarding his appointment, whether it was properly made or not and the authority so I can get after the Sheriff?”

The telegram and letters from Mr. Frank E. Beavers attached to your letter have been noted by me.

In 1921 by Chapter 8541 the Governor was authorized to appoint a Traffic Officer for all Counties of more than 80,000 and less than 100,000 population, according to the last preceding Federal census. The only County in the State to which this was applicable at the time was Hillsborough County.

By Chapter 10141, Acts of 1925, the Governor is authorized to appoint a Traffic Officer for all Counties of not less than 130,000 population according to the preceding census. From the census report the only County to which this would apply is Hillsborough County, Florida. I find no other Statute authorizing the appointment of Traffic Officers.

Respectfully,

J. B. JOHNSON,  
Attorney General.

#### COUNTY JUDGE—EXPIRATION OF OFFICE

October 19, 1926.

*Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.*

Dear Governor:

I am in receipt of your letter as follows:

“On March 19, 1926, I appointed Hon. Wesley C. Richards as County Judge for Hendry County, to fill the unexpired term of Mr. E. M. Cornett, resigned. There seems to be some question as to just when Judge Richards’ term will expire.

“Will you kindly advise me whether or not this term will

expire immediately after the general election, or whether it will expire January 1, 1927."

Section 6 of Article XVIII of the Constitution provides:

"The term of office for all appointees to fill vacancies in any of the elective offices under this Constitution, shall extend only to the election and qualification of a successor at the ensuing general election."

In the case of Judge Richards, his term will expire under your appointment, as soon as his successor or he (should he be elected) can properly qualify after the general election is held.

Section 14 of Article XVI provides:

"All State, County and Municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

Respectfully,

J. B. JOHNSON,

Attorney General.

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#### TAXES—REMISSION OF

November 4, 1926.

*Hon. John W. Martin,  
Governor,  
Tallahassee, Fla.*

My dear Governor:

I am in receipt of your favor of the 3rd inst., as follows:

"Am attaching hereto letter from Mr. Wm. B. Young, of Jacksonville, which asks if I can do something regarding the

State and County taxes on certain properties which the letter describes.

“Have I any legal right to do as he requests?”

I also note attached to your communication a letter addressed to you from Mr. William B. Young of Jacksonville. I note Mr. Young requests that the State and County taxes on the Woman's Club property in Jacksonville, be remitted proportionally.

There is no law in the State of Florida that would authorize the Governor to remit taxes in any instance, neither for error in assessment or on account of exemption nor for any other purpose.

Respectfully,

J. B. JOHNSON,  
Attorney General.

## CONVICTS SENTENCED TO DEATH—EXPENSES FOR BOARD AND LODGING

STATE VS. FORTUNE FERGUSON

STATE VS. ABE WASHINGTON

November 8, 1926.

*Hon. John W. Martin,*  
*Governor,*  
*Tallahassee, Fla.*

Dear Governor:

Your favor of the 5th inst., with reference to the present status of the above entitled cases, both of which parties



are under death sentence and for the execution of whom death warrants have been issued, has been received.

With reference to the case of FORTUNE FERGUSON, I note you state:

"Now since January 16, 1924, this negro has been in jail under sentence of death, and I am advised by the Sheriff of Alachua County that the County Commissioners have refused to pay his board to the Sheriff, further, which the Sheriff is entitled to for keeping him, the County Commissioners stating that they are not going to pay for the maintenance of this prisoner further.

"I am also advised by the Sheriff that they refused to pay his cost bill for carrying him back to Gainesville from Raiford, where he was taken for the purpose of electrocution.

"Will you please advise me as to the legal Status of this case and when the sentence of the Court can be executed and whether or not the County Commissioners can lawfully refuse to pay his board to the Sheriff, as the Sheriff does not want to take care of him at his own expense, and if the County Commissioners can refuse to pay the Sheriff his cost bill for carrying him back to Gainesville from Raiford, where he was taken to be electrocuted."

Under the law, any person under sentence of death remains in the custody of the Sheriff of the County until death warrant has been placed in his hands. The Sheriff is then required to convey the prisoner to the Prison Farm for the infliction of the death penalty. Until the prisoner is taken from the County Jail and conveyed to the State Penitentiary for the execution of the death sentence, he is a charge upon

the County and the Sheriff is entitled to his lawful fees for feeding such prisoner.

We are advised that Death Warrant was issued for Fortune Ferguson and that the Sheriff conveyed the prisoner to the State Prison Farm for the execution of the death sentence. We are further advised that some court order was issued staying the execution of this death sentence, which would legally nullify the death warrant for the time being. The custody of the prisoner, Fortune Ferguson, reverts to the Sheriff of Alachua County until such time as another death warrant shall be issued. The prisoner becomes a charge on the County and the Sheriff is entitled to his fees, both for conveying said prisoner and for the prisoner's subsistence, which are proper charges against the County.

In the matter of the case of ABE WASHINGTON, we are advised that the Supreme Court issued an order allowing the said Abe Washington to apply to the Judge of the Circuit Court for a Writ of Error Coram Nobis.

We are also advised that the Judge of the Circuit Court in Duval County issued some order staying the execution of the death sentence against Abe Washington.

We beg to inform you that this office was not notified officially or in any other manner of the application of either of these defendants for the orders or writs secured by them. We were not given the opportunity to contest these applications.

Respectfully,

J. B. JOHNSON,  
Attorney General.

# INCORPORATORS—ACKNOWLEDGMENT OF SIGNATURES

February 13, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Complying with your request of this date that I advise you whether or not the signatures and acknowledgments attached to the proposed Charter of Hillsborough River Development Company are sufficient, I beg to say:

It is my opinion that in this regard the proposed incorporators have complied with the Statutes. The last sentence of Section 4050, Revised General Statutes of Florida, read as follows:

“Each of such subscribers shall acknowledge his signature before some officer authorized to take acknowledgments of deeds.”

In the instant case there are only three names subscribed to the proposed Charter and acknowledgment by these three persons is attached to the same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

# CORPORATION—TRANSFORMATION OF INTO CO- OPERATIVE ASSOCIATION

February, 16, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Section 23 of Chapter 9300, Acts of 1923, provides for the transforming of a previously existing corporation into a

co-operative association to operate and conduct its business under the provisions of said Chapter and, therefore, it follows when any existing corporation has complied with the provisions of the Act transforming its organization so as to comply with the Co-operative Marketing Act it thereby acquires a different status and existence and thereupon Letters Patent should issue to such transformed corporation authorizing it to do business under the provisions of said Chapter.

It appears from files transmitted to me that Hastings Potato Growers Association, a corporation heretofore existing under the General Corporation Law of Florida, has complied with the provisions of the Chapter above mentioned and has thereby transformed its corporate existence and is entitled to have Letters Patent issued to it as such Co-operative Marketing Association.

It appears to me that the form which you have been using is adequate for use in cases of this kind.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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CORPORATION—PERFORMANCE OF TRUST  
FUNCTIONS

February 23, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you whether or not it is proper for Letters Patent, or an amendment to Letters Patent, to be issued to a corporation not organized under the provisions of Chapter 6155, Acts of 1911, wherein it is stipulated in such Letters Patent, or amendment to Letters

Patent, that such corporation shall have the right and authority "to act as executor, administrator, guardian, trustee, or attorney-in-fact", I beg to advise under the law of this State only those companies which are organized under the provisions of the Chapter aforesaid may lawfully perform such functions regardless of what may appear in the Letters Patent or Charter. In my opinion, it is not proper for any Charter to be issued purporting to authorize the company to do business or perform functions which may not lawfully be done or performed.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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CORPORATIONS—FOREIGN USING WORD "TRUST"

April 24, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee. Fla.*

Dear Sir:

I have your request as to whether or not a foreign corporation of which the word "trust" is a part of the name may domesticate under the laws of the State of Florida.

It is my opinion there is nothing in our Statutes to prevent the domestication of such corporations although such corporations can not exercise trust functions under the law of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.



CORPORATIONS — FOREIGN — EXERCISING TRUST  
FUNCTIONS

April 30, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Complying with the request that I advise you whether or not the Lynchburg Trust and Savings Bank is eligible for domestication under the laws of the State of Florida, I beg to say it is my opinion that it is not and that you can not lawfully issue a certificate authorizing such corporation to do business in this State.

It is also my opinion that no foreign corporation under the provisions of Chapter 8531, Laws of Florida, may exercise trust functions in this State and, therefore, if this were not a banking corporation and was such a corporation as could be domesticated under the laws of the State of Florida, it could not then act as Trustee for the Boynton Beach Hotel Association mortgage because this is a trust function, which can only be exercised as to property in the State of Florida by corporations receiving their Charters under the laws of the State of Florida.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

CHARTER—APPLICATION FOR—NUMBER OF  
INCORPORATORS

May 5, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

It appears there are four subscribers to stock in this corporation whose names appear attached to the proposed Arti-

cles of Incorporation, only three of whom subscribed their signatures.

It is my opinion when three or more of those who subscribe for stock in a corporation subscribe to the proposed Articles of Incorporation by attaching their signatures thereon and thereupon acknowledge the signatures before an officer authorized to take acknowledgments of deeds, that they thereby comply with the provisions of Section 4050, Revised General Statutes of Florida.

My letter to you under date of February 13, 1925, (copy of which is attached hereto), *in re* Hillsborough River Development Company is in line with this advice.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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#### CORPORATIONS NOT FOR PROFIT

May 22, 1925.

*Hon. H. Clay Crowford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of May 22nd asking me to advise you whether or not in my opinion it is proper for you to issue certificate to AMERICAN FOUNDATION, INC., authorizing this corporation to do business in the State of Florida upon the payment of \$5.00 filing fee, together with \$5.00 for issuing the permit.

It appears from the certified copy of Articles of Incorporation that this is a foreign corporation without capital stock and a non-profit organization.

It is my opinion that under the provisions of Sections

4095 and 4096 of the Revised General Statutes of Florida, such corporations are entitled to the privilege of doing business in this State upon complying with the provisions of these Sections and that the Secretary of State is authorized to file such Charters and issue permits to the same as foreign corporations, authorizing them to do business in this State upon the payment of the fees prescribed.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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CORPORATIONS—AMENDMENT OF CHARTER

July 16, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Complying with your request that I advise you as to whether or not corporations created prior to July 15th, 1925, under the laws of the State of Florida, and thereafter seeking to amend the charters of such corporations, will be required to conform to the Corporation Law as passed by the Legislature of 1925, or by complying with the law as it existed prior to the passage of that Act, I beg to say:

Section 63 of the Corporation Law of 1925 very clearly fixes the status of this matter. And it is therein provided that the provisions of law contained in the Sections and Chapters therein enumerated shall remain in full force and effect as to corporations incorporated previous to the effective date of the Acts of 1925.

A corporation existing under the old law, seeking to amend its charter as to capital stock, will be governed by the provisions of Chapter 9124, Acts of 1923.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATION—FOREIGN—AMENDMENT TO  
CHARTER

July 21, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of this date which reads as follows:

"I am submitting for your attention an amendment to the Charter of E. I. DuPont de Nejours & Company, a foreign corporation, by which the capital stock of the corporation has been increased from \$260,000,000 to \$310,000,000 and will ask that you advise this office as to the amount of charter tax this corporation must pay on the said increase of the capital stock—must this charter tax be calculated under the Corporation Law of 1923 or under the Act of 1925?"

The charter tax above mentioned should be calculated under the corporation law of 1925.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATION—DOMESTIC—INCREASE OF CAPITAL  
STOCK

August 1, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I herewith return application of Peter O. Knight & Sons for increase of capital stock 1,000 to 1,200 shares.

I beg to advise it is my opinion that the corporation is required to pay the charter fee on the increase of capital stock regardless of the fact that at one time Knight Investment Com-

pany was organized with a capital stock of 4,000 shares, which capital stock was later reduced to 1,000 shares and which corporate name was changed to Peter O. Knight & Sons. It is my opinion that when the corporation reduced its capital stock it forfeited all rights and privileges incident to the higher capitalization and that the fees theretofore paid for such higher capitalization do not remain as a credit to be applied on a future increase of authorized capital stock.

I have a letter from Mr. Knight stating that if you require the payment of fees he will gladly pay the same but requesting that the certificate allowing amendment be forwarded to him at once, as the delay is causing him some embarrassment.

I am sure you will be glad to comply with Mr. Knight's request and that he will immediately transmit to you the required additional fee.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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CORPORATION—CERTIFICATES OF INCORPORATION, AND FEES THEREFOR

September 1, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I have read letter, under date of August 18th, addressed to you by Mr. Maxwell Baxter, and also letter, under date of August 28th, addressed to you by Mr. Baxter.

The Certificate of Corporate Existence which was prepared by me for use in connection with the administration of Chapter 10096, Acts of 1925, was and is intended to be used



as evidence to the incorporators that all things have been done which are necessary to be done to give the corporation existence under the laws of Florida. The same result may be had by furnishing certified copy of the Certificate of Incorporation, in which case your office is entitled to and should receive pay for making up the copies and pay for the Certificate. The law does not contemplate, in my opinion, that incorporators may evade the payment of copying fees by having copies made in their office and furnished to you to be verified and certified. The administration of the law will require you to keep Clerks in the office to do this work. The Certificate of Incorporation is less expensive than the making up of certified copy.

Mr. Baxter insists that the Certificates of Appointment of Resident Agent and Certificate of Acceptance of such appointment should be filed at \$2.00. I do not so construe the Act.

It is my opinion that all Certificates, except a Certificate of Verification and except those Certificates for which a fee of \$10.00 is provided, require a fee of \$5.00. The fee of \$2.00 referred to in the next to the last paragraph of Section 56 is for receiving, filing and indexing all papers combined in each case, or in regard to each corporation filed in your office. This is what might be called a docketing fee and, in my opinion, is in addition to and separate and apart from the fee to be charged for various certificates.

I am advised that a local attorney contemplates bringing mandamus proceedings to test the correctness of this opinion. I, therefore respectfully suggest that you adhere to rules under which you have been administering this Act until the Courts shall have either upheld or declined to uphold the same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

## CORPORATIONS—DOMESTIC—ORGANIZATION

October 20, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Replying to your request for advice as to how corporations for profit may be organized in this State, I beg to say it is my opinion that such general corporations may now be organized only under the provisions of Chapter 10096, Laws of Florida, Acts of 1925.

There are certain classes of corporations which are excluded from the provisions of the Act as set forth in the last paragraph of Section 3 of the Act. We have special Statutes governing the creation of corporations designated in this paragraph.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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## CORPORATIONS NOT FOR PROFIT—INCORPORATION

December 8, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

*In re* Application of The Layman Foundation, a non-profit corporation under the Laws of the State of Tennessee, to qualify to do business in the State of Florida.

I have looked into this matter and it is my opinion that non-profit foreign corporations are not entitled to qualify to do business in this State through your office. It is my opinion

that if they desire to do business in Florida they should incorporate in Florida before some Circuit Judge, as provided in Sections 4499 to 4509, Revised General Statutes of Florida.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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CORPORATION—NAME OF—LAW AFFECTING TRADE  
MARK

December 23, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of the following letter dated December 23 from you:

"I am submitting for your consideration, letter and papers received from Messrs. Hudson & Cason, in the matter of the use of the word "Esperanza" as part of the name of a corporation, in view of the fact that a certificate of registration of the word "Esperanza" under the trade mark law, has previously been issued from this office."

The law in Florida authorizing the registration of trade marks was passed in each instance to cover particular cases. In my opinion, there is no law in Florida authorizing the registration of trade marks for general purposes.

I note the application for a charter in the name of "Esperanza Realty Company." If this name has already been utilized by an existing corporation it cannot be used again and the fact that some party had undertaken to register the name "Esperanza" as a trade mark would not prevent some corporation from including such word in its corporate name.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## CORPORATIONS—DOMESTIC—INSURANCE

December 23, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Mr. Crawford:

I am in receipt of the following letter from you dated December 23rd.

"I am submitting for your consideration, letter and papers in the matter of Security Abstract Company.

"These papers include a letter written by Mr. C. L. Waller, Vice-president of the Corporation Service Company of Florida, which appears to fully explain the question that I would like for you to answer."

Attached to the petition of the Security Abstract Company for charter and letters patent, authorizing them to do business as a corporation, is a letter of Mr. C. L. Waller, Vice-president of the Corporation Service Company of Florida, as follows:

*"Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

"Dear Mr. Crawford:

"We are transmitting herewith a petition for the reincorporation of Security Abstract Company. You will observe that both in the original charter and in the Articles of reincorporation it is provided that the corporation shall have the power to insure titles to real estate. The original charter was granted prior to the ruling of the former Attorney General, Mr. Buford, which ruling held that only a trust could insure titles to land. This corporation, therefore, already had the right under its charter to insure titles.

"But even if it did not have that right we can find no authority in the law for the ruling of the former Attorney General. We have discussed this matter personally with Mr. Buford and the basis of the ruling is Paragraph 14 of Section 4185 of the Revised Statutes of Florida. This paragraph provides that trust companies may insure titles to real estate provided such powers and purposes are enumerated in the charter therein. Mr. Buford held that since this was a function conferred upon a trust company that therefore only a trust company could exercise that function. But by the same process of reasoning only a trust company 'could lease, hold, purchase and convey any realty property necessary for and convenient in the transaction of its business,' etc., as is provided in Paragraph 4 of Section 185. Certainly it could not be contended that only a trust company could lease property and convey real estate, and therefore it cannot be logically contended that since a trust company may under certain conditions insure titles, because that power is conferred on trust companies, that no other corporation could exercise that function.

"We have searched the Statutes carefully and Paragraph 14 of Section 4185 is the only reference to insuring titles to land that we have been able to find in the Statutes and this certainly could not be construed to limit such a power only to trust companies. We will concede that some legislation should be made requiring concerns writing title insurance to safeguard the policy holders in a manner similar to other insurance companies but such is not in the law.

"We have gone at length into this matter for the purpose of requesting that you refer this matter to the present Attorney General for his opinion thereon, and that he might be fully advised of the position taken by the incorporators of the above named company.

"The opinion above expressed by us is shared by a great many attorneys in the state. The ruling has not only prevented corporations from being formed to guarantee titles but



has prevented large foreign title insurance companies from coming here to write insurance, because they were not trust companies organized under the laws of Florida.

We are transmitting herewith the petition and articles, for the re-incorporation of the above together with check to cover additional charter tax and fees of Secretary of State.

Yours very truly,

CORPORATION SERVICE COMPANY OF FLORIDA

By (signed) C. L. WALLER,

Vice-president."

I am not able to agree with Mr. Waller in this matter. There is a separate law in Florida, providing for the incorporation of insurance companies generally. The proposed charter of the Security Abstract Company undertakes to authorize said company "to issue policies of title insurance upon real property in the County of Dade and in such other Counties in the State of Florida as the corporation may desire. \*\*\*"

Where any corporation is engaged in the business of insurance in the State of Florida they are required by law to do certain things for the protection of the policy holders. Mr. Waller cites the provisions of Paragraph 14 of Section 4185 of the Revised General Statutes, where authority is conferred on trust companies to write title insurance. Trust companies would not be authorized to write title insurance under their charter unless such authority is carried in the charter and in addition to that, if such trust company exercises these extra powers they have to deposit with the State Treasurer an additional security of \$10,000 in cash, mortgages, deeds of trust of real estate, United States, County or Municipal Bonds or a surety bond of any company licensed to do business in this State.

Chapter 10096 in the Proviso at the end of Paragraph 10 of Section 3 of said Act provides as follows:

"Provided, however, that corporations may not be formed under this Act to conduct in this State the business of banking companies, trust companies, safe deposit companies, building and loan associations, insurance companies, mutual fire insurance associations, surety companies, express companies, railroad and canal companies, (but street and inter-urban railway companies may be incorporated hereunder) telegraph and telephone companies, co-operative associations, fraternal benefit societies, state fairs or expositions, cemetery companies, or corporations not for profit; but corporations may be formed hereunder to exercise the purpose of express companies, railroad and canal companies and telegraph and telephone companies in other States and jurisdictions when and where permissible under the laws thereof."

You will note this exception includes insurance companies generally and fire insurance of class designated.

For these reasons you would not be authorized to give corporations organized under said Chapter 10096 authority to do an insurance business.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CORPORATIONS—FOREIGN—1925 ACT NOT  
APPLICABLE TO

December 23, 1925.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of the following letter from you dated December 23rd:

"I am handing you copy of a pamphlet containing what is commonly called the foreign corporation law of this State, which includes a portion of Chapter 10096, Laws of Florida, 1925, with the request that you erase therefrom such portions of said Chapter 10096, as in your judgment does not apply to foreign corporations."

None of the provisions of Chapter 10096, Acts of 1925 apply to foreign corporations but apply only to corporations organized under the provisions of said chapter or reorganized under the provisions of said chapter.

Foreign corporations applying to do business in this State would naturally have to pay the charter fees prescribed for corporations incorporating under the laws of this State, the law governing foreign corporations providing that they shall pay the same charter fees as corporations incorporating under the Florida law.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CORPORATION—REINCORPORATION UNDER  
1925 ACT

January 4, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
The Capitol,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 4th inst., with letter from Messrs. Burwell & Redfearn, Attorneys at Miami, Florida, and petition for the reincorporation of the Gulf State Furniture Company and the letters patent issued to said corporation on the 9th day of June, 1925, received and considered.

The matter as presented for the reincorporation of this company is rather anomalous. They state in the letters and petition that the corporation never organized under the letters patent granted on June 9th. Still, so far as your office is concerned, letters patent are outstanding for such a corporation using that name.

Section 64 of Chapter 10096 provides how existing corporations, or rather corporations organized prior to the passage of this chapter, might reincorporate. This petition for reincorporation does *not* come up to the requirements as prescribed in said Section 64. The present owners of this charter should organize to the extent that they could present a certificate executed by the President of the corporation and attested by the Secretary.

You would not be authorized to issue letters patent for the reincorporation of any company that does not comply with these requirements. I would advise you to return these papers, informing the petitioners of what they will necessarily have to do in order to surrender the old charter and reincorporate under the Law of 1925.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### DECLARATIONS OF TRUSTS—PREREQUISITES

January 15, 1926.

*Hon. H. Clay Crawford,*  
*Secretary of State,*  
*Tallahassee, Fla.*

Dear Sir:

Your favor of the 15th inst., submitting to me Declarations of Trust of the above companies, received.

I have gone through these Declarations and I am in-

clined to think you will be authorized to give them a certificate showing that such Declaration of Trust has been filed in your office. Before this trust will be authorized to do business or offer for sale any of its shares, they will have to procure from the Investment Company Board of the State of Florida a permit to offer such shares for sale. Otherwise, they would be subject to criminal prosecution.

I note in these Declarations of Trust that they carry the authority to write surety bonds. Before they would be authorized to engage in writing bonds they will have to get a permit from the State Treasurer to do a surety business.

It is also noted that the Declarations of Trust carry the authority to insure land titles. Before they will be authorized to write any of this insurance they will have to get a permit so to do from the State Treasurer.

You will note in the latter part of Seciton 2 of Chapter 9521, Acts of 1923, authorizing Declarations of Trust, it provides:

“\*\*\* the Secretary of State shall thereupon issue to the Trustees named in such Declarations of Trust a certificate showing that such declaration has been duly filed in the office of the Secretary of State, and authorizing such organization to transact business in the State of Florida, PROVIDED ALL OTHER LAWS HAVE BEEN COMPLIED WITH.”

Very truly yours,

J. B. JOHNSON,

Attorney General.



## CORPORATIONS—FOREIGN—CHARTER FEES

February 3, 1926.

*Hon. H. Clay Crawford,  
Secretary of State, ---  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your note as follows:

"In view of the fact that this is a foreign corporation. would Secretary of State be authorized to qualify said corporation in this State when they have so indefinitely set forth the total amount of authorized capital stock? See paragraph numbered 'Fifth,' bottom of 3rd page, and top of 4th page."

From the charter of GREENACRES, INC., it appears that they have a capital stock of \$500,000, with a par value and also 10,000 shares of no par value. Charter fee should be collected on both the amount of preferred and common stock.

The charter and other papers are returned herewith.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## CORPORATIONS—FEES

February 15, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 15th, in which you call my attention to the certificate omitted from the list of certificates furnished and ask my advice as to the authority for issuing such certificates and the fees to be charged.

Since writing you on February 13th with reference to the forms of certificates submitted, I have gone into this matter more thoroughly and find it is rather difficult to say just what certificates should be used and what fees should be charged.

Of course, the law is plain as to the charter fees to be collected by your office on the capital stock. As to other fees to be charged by you for certificates, I will undertake to give you a list as follows:

1. Certificate of dissolution .....	\$ 10.00
2. Certificate amending charter .....	10.00
3. Certificate increasing capital stock .....	10.00
4. Receiving, filing and indexing certificate appointing resident agent .....	2.00
5. Receiving, filing and indexing certificate of agent's acceptance .....	2.00
6. Receiving, filing and indexing certificates, statements, affidavits, decrees, agreements, reports and other papers, ea. ....	2.00
7. For certified copies, same as now provided for by law	
8. For recording and indexing any paper, per line .....	.01
9. For receiving filing and indexing certificate of incorporation .....	5.00

I note you have been issuing a certificate of incorporation. This certificate is not provided for by the Act. It would be proper for the corporation to have a certified copy of its charter, to be furnished by you and to be charged for by you accordingly. This will eliminate the certificate of incorporation heretofore issued by you.

Certificate of the appointment of resident agent is necessary.

Certificate heretofore issued by you and transmitted to the Clerks of the Circuit Court are unnecessary and should be eliminated.

When anyone desires certified copy of any papers required by law to be filed in your office, the charge for making these papers and certifying them will be as now provided for.

The certificate certifying the amendment of charter submitted is not provided for by law, and should be eliminated. Certified copy of amended charter would be proper.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CORPORATIONS—RESIDENT AGENT

March 11, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 22nd inst., with attached letter from the Corporation Service Company of Florida, received.

There is nothing in the Corporation Law that would preclude the naming of the Resident Business Agent in the charter. This can legally be done but the certificate of acceptance is to be furnished by such resident agent.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## STATE—GREAT SEAL OF—FEE FOR AFFIXING

March 12, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 12th inst., as follows:

"I would appreciate your advising me as to whether or not I, as Secretary of State, would be authorized to affix the Great Seal of the State of Florida to documents for other officers of the State Government, executive or judicial, without collecting the sum of \$2.00 therefor."

We find no exceptions in the law governing this matter.

Under the old law, in charging for certificates, the law required you to charge \$1.00, to be turned over to the State Treasury and \$1.00 as your fee. Under the Act of 1925, fixing the salary of State Officials, it provides that you shall faithfully account for all fees received and that same shall be accounted for by you and paid into the State Treasury. Under these Statutes you will necessarily have to charge for each certificate. It does not matter who gets the certificate.

The trustees of the Internal Improvement Fund, in getting certain certificates since I have been connected with them, have always paid the \$2.00 fee. Unless an exception is made in the Statute at some future time, it is my opinion that you will have to collect and account for the \$2.00 for each certificate issued.

Of course, I am sorry that the law stands this way but it cannot be helped.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## NOTARIES PUBLIC—QUALIFICATION OF

March 16, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of letter dated March 12, 1926 from M. F. Robinson, asking if a person who is not naturalized is eligible for appointment as a Notary Public.

The law does not prescribe the qualifications of Notaries Public as to citizenship or residence. It is a matter that would be left to the discretion of the Governor.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## CORPORATIONS—FOREIGN—FEES

March 16, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 15th inst., together with application and charter of the U. S. Hoffman Machinery Corp., submitting to qualify to do business in the State of Florida, with the request that I advise you the amount of charter tax you should collect.

The law requires that you shall collect from such foreign corporations, for the use of the State, a sum equal to that which the said corporation would have been required to pay as a charter fee if it had been incorporated under the laws



of this State. If this corporation had been incorporated under the laws of Florida, it would have had to pay the usual fees under its original charter.

When this corporation amended its charter in May, 1922, it made an increase of its capital stock from 112,500 shares to 150,000 shares. They would have then been required to pay a charter tax on such increase.

On August 15, 1924 this corporation again amended its charter and increased its original capital stock from 12,500 shares of preferred stock to 13,000 shares of preferred stock. It increased its common stock or non-par value stock from 150,000 shares to 223,334 shares. You should calculate the charter tax on this entire stock under the schedule of fees provided for in Section 56 of Chapter 10096, Acts of 1925.

I note this corporation claims it had retired 12,500 shares of preferred stock. That would not relieve them from the necessity of paying on that amount of stock in Florida. On the other hand, the last amendment of this charter provided for 13,000 shares of preferred stock at a par value of \$100 each.

It would be proper for you to calculate the charter tax on the 12,500 shares of this corporation's original preferred stock and then calculate the charter tax on the increase made in the preferred stock by the last amendment, making the charter tax to be calculated on, 13,000 shares of preferred stock at a par value of \$100 per share.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

CORPORATION—DOMESTIC—INCREASE OF CAPITAL  
STOCK UNDER ACT OF 1923

April 8, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 8th inst., as follows:

"I am enclosing proposed amendment increasing the capital stock of the JACKSONVILLE GAS COMPANY, a corporation organized and existing under the laws of the State of Florida, prior to the amendment of Chapter 10096, with the request that you advise this office as to whether the amount of charter tax to be paid should be calculated under the schedule contained in the amendment to corporation law that was enacted in 1923 or under the schedule provided in said Chapter 10096."

Section 63 of Chapter 10096 provides that the laws existing, sections and chapters being enumerated, prior to the enactment of Chapter 10096 "shall not apply to corporations incorporated or reincorporated under this Act", but that said law should remain in full force and effect as to "corporations incorporated previous to the effective date" of said Chapter 10096.

Section 64 of Chapter 10096 provides:

"Any corporation organized and existing under the laws of this State on the date on which this Act becomes effective, may reincorporate under this Act either under the same or a different name by filing with the Secretary of State a certificate executed by its president and attested by its secretary under the corporate seal and duly authorized by a meeting of the stockholders called for that purpose, setting forth

the statements required in an original certificate by Section 3 hereof,\*\*\*"

Under these provisions corporations existing in the State prior to the effective date of Chapter 10096 function and are to be governed by the laws existing prior to that time. Corporations organized prior to the effective date of Chapter 10096 have a right to amend their charter under the old law. They have the right to increase their capital stock under the old law.

The charter fees on the increase of capital stock would be governed by the schedule of fees prescribed in Chapter 9123, Laws of 1923. The charter fees of the JACKSONVILLE GAS COMPANY, on an increase of its capital stock, should be paid according to the schedule of fees prescribed in said Chapter 9123, Acts of 1923.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CORPORATION—CAPITAL STOCK—PAR AND NO  
PAR VALUE—FEES

April 30, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 30th inst., as follows:

"Acting upon request of Messrs. Giles & Gurney, of Orlando, Florida, I am submitting for your consideration two letters received from them—one dated April 16, 1926 and

the other dated April 26, 1926, to which I hope you will reply as promptly as possible."

I also acknowledge the receipt of the two letters from Messrs. Giles & Gurney.

My construction of the 1925 Corporation Law, with reference to the charter fees to be paid, is as follows:

The fees to be paid on capital stock with par value are to be calculated without reference to any stock of no par value. The fees to be paid on capital stock of no par value are to be calculated and paid without reference to any par value stock upon which the charter fees have been calculated. We do not think that the Legislature intended, in prescribing the rate to be paid on capital stock of no par value that credit should be allowed on par value shares already considered. The law provides:

"20 cents for each share of stock without nominal or par value authorized up to and including 1,250 shares."

There is nothing in this law indicating that it was the intention of the Legislature that the par value shares already paid on at a different rate should be taken into consideration and deducted from the shares of no par value to be paid on. The law provides two distinct classes of stock and two distinct schedules of fees to be charged. It is our opinion that the fees should be charged on each class of stock as prescribed in the Act without reference to the other class or allowing any credit for the other class on which fees might have been paid.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## CEMETERY COMPANIES—INCORPORATION

May 3, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

You have submitted to me letter from Messrs. Yeomans & Brown, Attorneys, West Palm Beach, Fla., dated April 29th, 1926 with reference to the incorporation of cemetery companies.

Cemetery companies not for profit are authorized to incorporate under the provisions of Section 4499 et seq., Revised Statutes of Florida.

Cemetery companies for profit can incorporate under the provisions of the general corporation laws of the State which were in force prior to 1925.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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## LAWS—SESSION—PRICE

May 14, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 13th inst., as follows:

“The cost of printing, binding, etc. of the Statutes of Florida following each session of the Legislature has grown to such proportions that the necessity has arisen to determine



the price that must be charged for them when they are sold to parties other than those to whom they are to be distributed without cost.

"The references to the matter contained in Section 4 of Chapter 140, McClellan's Digest; Joint Resolution No. 7, Laws of Florida, 1899; Section 1308, Revised General Statutes of Florida appear to cover the subject as far as I have gone in an effort to ascertain the law governing the matter.

"I have obtained from the State Printer a statement as to the cost of preparing the Statutes for 1925. They are as follows:

General Laws, per volume, bound .....	\$ 3.70
General Laws, per volume, unbound .....	1.20
Special Laws, per volume, bound .....	11.00
Special Laws, per volume, unbound .....	8.50

"The Board of Commissioners of State Institutions has adopted a resolution instructing the Secretary of State to charge for the above named books the cost of production.

"Please advise this office, what in your opinion will be the correct charge to be made for these books, and whether or not said price is to be applied to all Laws sold in the future, or to those enacted in 1925, only."

It is my understanding that the rule adopted by the Board of Commissioners of State Institutions as to price of Session Laws applied only to the Laws of 1925. We have no Statutes at all governing the sale of these books. Of course, if the price is fixed on the General Statutes but I find no Statutes with any reference to the Session Laws.

I think it would be wise for the Legislature to pass some Act regulating matters of this kind.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## TRUSTS—COMMON LAW, USING WORD "TRUST"

August 4, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 3rd inst., as follows:

"Will you please advise this office as to whether or not, in your opinion, there is any prohibition in the Statutes of this State that renders it unlawful for a Common Law Trust, qualifying under provisions of Chapter 9125, Laws of Florida, 1923, to use the word 'Trust' as a part of its name?"

It is my opinion that the provision of Section 4183, Revised General Statutes, as follows:

"\*\*\*and no company hereafter organized under any other Act shall use the word 'trust' as a part of its name.\*\*\*"

does not apply to a common-law declaration of trust, operating under the provisions of Chapter 9125, Acts of 1923. Of course, common-law trusts could not do a trust business as contemplated by the Act authorizing the organization of bank and trust companies.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CORPORATIONS—FOREIGN—SERVICE ON

August 27, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

You have submitted to me a letter from Messrs. Loftin,

Stokes & Calkins, Miami, Florida, dated August 25th, as follows:

"Under date of August 11th, you advised us that the MAINARD REALTY CORPORATION had not filed in your office, as required by the Corporation Act, the name of its resident agent.

"It now becomes necessary to get service upon said corporation, and all of its stockholders and officers reside in New York, their addresses being as follows:

"J. A. Goldfarb, 299 Broadway, New York City; Abe Kommel, care of Hon. Alex Wolf, 299 Broadway, New York City; M. C. Schill, 348 96th Street, Brooklyn, N. Y.

"Under the corporation Act this corporation is liable to a penalty for not certifying a resident agent upon whom service may be made.

"Would you please take up with the persons named above, the matter of their neglect to comply with the laws of Florida in this respect, and require them to designate their resident agent as required by law."

It seems that it is the desire of these attorneys to be able to get service on the Mainard Realty Corporation. Not being able to get service by reason of the fact that no resident agent is appointed and officers of the corporation are absent. If these parties are unable to get service on this corporation it would be impossible for this office to get service for the purpose of bringing suit for the penalty.

You can easily appreciate that this provision of the Corporation Law is a dead letter where the incorporators leave the State and there is no one upon whom service can be obtained. The Corporation Law should be amended so that such a condition could not prevail. If there were any assets or property of the corporation in the State that could be reached or attached, we might be able to enforce this penalty. If the parties represented by Messrs. Loftin, Stokes & Calkins

could attach any assets or property in this State they could secure service possibly through that process.

This office has not the working force nor the facilities for keeping up with the hundreds of corporations organized in Florida and undertaking to enforce these penalties. I would not care to subject the State to the cost of a proceeding of this kind with no assurance that we could recover the penalty and the cost incurred. The appropriations made for the expenses of this office are nominal and would not stand an expense of this kind.

Of course, I would like very much to enforce this provision of the Corporation Law but the better course would be to amend the law so that every corporation would have to have a permanent agent upon whom process could be served by naming some State official or the law be amended prohibiting the issuance of the charter until such agent has been appointed; or amended to provide that where a corporation failed to comply with any of these provisions that their charter should be forfeited and canceled out by the Secretary of State and the incorporators treated as partners.

Unless we could get service on these parties, the institution of a suit would be lost motion.

Very truly yours,

J. B. JOHNSON,

Attorney General.

CORPORATION—TIME FOR FILING AMENDMENT TO  
CHARTER

September 13, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of the 13th instant, as follows:

"The records of this office show that duly authenticated copy of charter of the Jewel Tea Co., Inc., a corporation organized and existing under the Laws of the State of New York, was filed here and that permit, authorizing said corporation to transact business in the State of Florida, was issued on February 18, 1916. The capital stock of the corporation at that time was \$16,000,000, and the maximum charter tax of \$250.00 was collected.

"I now have before me, submitted for filing here, the following amendments:

"One—dated May 1, 1924—reducing the capital stock of the corporation to \$15,640,000.

"One—dated January 28, 1925—changing the capital stock from \$15,640,000 to \$3,640,000, and 120,000 shares of no par value.

"It is to this latter that I wish to ask your particular attention.

"If a copy of this amendment had been filed here 'within thirty days', as is required by Section 3 of Chapter 5717, Laws of Florida, the capital stock would, for the purpose of calculating charter tax, have remained unchanged, and no additional charter tax would have been due the State of Florida.

"Please advise me if, in your opinion, the Jewel Tea Co.,



Inc., may now file this amendment and secure the advantage of the previous law. If not, on what basis must the amount of charter tax be calculated?"

I have looked over this amended charter. I find that a paragraph of Section 56 of the Corporation Law of Florida, 1925, reads as follows:

"Whenever there shall be filed with the Secretary of State a certificate amending a certificate of incorporation by increasing the authorized number of shares or the par value of shares or an agreement for the consolidation of two or more corporations the Secretary of State shall demand and receive for the use of the State the same fees as in the case of an original certificate of incorporation having the shares provided by said certificate as amended or said consolidation agreement except that all fees therefor paid by said corporation or corporations with respect to the shares authorized prior to such amendment or consolidation shall be deducted, but in no case shall he demand and receive less than Ten Dollars."

The above paragraph provides certain fees when such amendment increases the authorized number of shares, but as I understand the charter in question, or the amended charter, does not increase the number of shares, but changes 120,000 par value stock to non-par value stock.

Section 3 of Chapter 5717, Acts of 1917, provides that a permit to do business shall be revoked unless the amendment to the articles of incorporation shall have been filed within 30 days, and the amount of the charter fees on the increase of capital stock paid. This Section provides:

"If any such corporation shall fail to file any amendment, and to make the payment aforesaid, within said 30 days, its permit shall be deemed to be revoked until the provisions of this Section shall have been complied with."

As I understand this provision of the law, it means that

the permit stands revoked until they shall have filed an amended charter and paid the amount of charter fees necessary to an increase in the capital stock, and as this company is now tendering to be filed an amended charter it is my opinion that the same should be accepted and filed.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

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CORPORATION—TIME FOR FILING AMENDMENT TO  
CHARTER

September 20, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of this date as follows:

"I am submitting for your consideration certain papers, together with correspondence with Messrs. Willard & Knight, with reference to increase of capital stock of J. F. Ambrose Company, that you may advise me as to whether or not, in view of the provisions contained in Section 4085, Revised General Statutes of Florida, as follows: 'it shall be the duty of the president within thirty days thereafter to make a return to the Secretary of State, under oath', etc., it would now be proper for me to file this return of president and authorize the increase of capital stock.

"As you will note, the meeting of stockholders was held on January 25, 1926, and the return of president was not received at this office until June 4, 1926. It had not, at that time, been sworn to by the president and was returned to have the detail complied with and the paper was finally sent to this office on September 13."

It is my opinion that you would be authorized to file the certificate of increase of the capital stock of the J. F. Ambros Company.

It is true the statute provides "it shall be the duty of the president within thirty days thereafter to make a return to the Secretary of State, under oath", etc., but it is possible that this Statute would be construed that it was continuing duty of the president to make such return even after the expiration of the thirty days.

Where the law prescribes a duty to be performed, the usual construction is that it is a continuing duty until properly performed.

Under the circumstances, would advise the filing of the return above mentioned.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

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CORPORATION—CHARTER FEES NOT A FRANCHISE  
TAX

December 4, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

You have submitted to me for my opinion a letter addressed to you by the Cudahy Packing Company, Chicago, Illinois, dated November 30th, 1926, with reference to the increase of capital stock of the said Cudahy Packing Company and asking my opinion as to charter fees which should be charged.

I note that the Cudahy Packing Company is a foreign corporation under the laws of the State of Maine; that in

June, 1919 they qualified and secured permit to do business in the State of Florida; that at the time they secured this permit in 1919 their capital stock was \$35,000,000

We note that they have amended their charter and increased their capital stock to an authorized capital of \$45,000,000.

They are now raising the question as to whether or not they should be required to pay additional charter fees in order to continue to do business in the State of Florida. They seem to think that they should not be required to pay any further fees, claiming the same to be a tax on interstate commerce. In their letter they cite the case of *LOONEY v. CRANE CO.*, 62 Law Ed. 230, same being 245 U. S. 178. They also cite the case of *AIRWAY ELECTRIC APPLIANCE Co. v. DAY*, 69 Law Ed. 196.

In both of the cases cited by the writer of this letter, the question involved was a franchise tax and not charter fees imposed incident to a permit to do business in a State. The tax in question in the two cases cited was a tax imposed after the corporation had been authorized and permitted to do business in the State.

The Supreme Court of the United States in numerous cases has held that the State may impose such conditions upon permitting a corporation to do business within its limits as it may judge expedient, such as the payment of a specific license tax or a sum proportionate to the amount of its capital. This was held in the case of *HORN SILVER MINING CO. v. NEW YORK*, 143 U. S. 305. The cases holding to this rule are too numerous to undertake to mention.

Of course, any foreign corporation can engage in interstate commerce in any State without securing a permit or qualifying under the State laws but when any foreign corporation desires to enter a State and engage in intra-State commerce, it has to comply with the laws of the State which they

desire to enter, and a State has the right to impose such conditions as it sees fit.

At the time the Cudahy Packing Company qualified to do business in the State of Florida, the charter fees to be charged for corporations organized under the laws of the State were \$2.00 upon each \$1,000 of capital stock of such corporation, provided that no charter fee should be less than \$5.00 nor more than \$250.

By Chapter 9124, Acts of 1923, this Section 4052 prescribed the charter fees to be paid, was amended, fixing the charter fees at \$2.00 upon each \$1,000 of capital stock up to \$125,000; 50 cents on each additional \$1,000 up to \$2,000,000 and 25 cents per thousand on all capital stock in excess of \$2,000,000. The Statutes authorizing the terms and conditions upon which foreign corporations shall be admitted to do business in this State provide that such corporations shall file authenticated copy of its charter or articles of incorporation and pay the same charter fees that would have been required had such foreign corporation been incorporated under the laws of the State of Florida.

The laws of the State require that where domestic corporation increases its capital stock it shall be required to pay the charter fees due for such increase of stock. The law with reference to foreign corporations requires that where they increase the capital stock the Secretary of State shall receive from the corporation for the use of the State a sum equal to that which such corporation would have been required to pay if it had been a domestic corporation.

In 1925 the Legislature enacted a law relating to corporations, Chapter 10096, Acts of 1925, which expressly provides that the provisions of the Act shall apply to corporations incorporated or consolidated thereunder or reincorporated thereunder and to no other corporation.

This new Corporation Law, as I understand it, would not apply to the Cudahy Packing Company, it having been



granted a permit to do business in this State prior to the Corporation Act of 1925.

It is my opinion that the amendment to the charter of the Cudahy Packing Company increasing its capital stock from \$35,000,000 to \$45,000,000 renders this company liable to the State of Florida for fees according to the schedule given in Section 4052 of the Revised General Statutes, as amended by Chapter 9124, Acts of 1923. This would be at the rate of 25 cents per \$1,000 on such increase.

Section 4097 of the Revised General Statutes provides:

"If the charter or articles of incorporation of any foreign corporation shall be amended after a permit has been issued to it under the provisions of this Act, such corporation shall within thirty days thereafter file and deliver authenticated copy of the amendment in the office of the Secretary of State, who shall issue to the corporation a certificate of the filing; but if the amendment is one increasing the capital stock he shall not deliver the certificate until he shall have received from the corporation for the use of the State a sum equal to that which such corporation would have been required to pay if it had been a corporation increasing its capital stock under the laws of this State. If any such corporation shall fail to file any amendment and to make the payment aforesaid within said thirty days its permit shall be deemed revoked until the provisions of this Section shall be complied with.\*\*\*"

Now, these charter fees are not a tax on interstate commerce and do not come under the authorities cited in the letter from the Cudahy Packing Company but are conditions which have to be complied with by said corporation before it is permitted to do business in this State other than an interstate commerce business.

Very truly yours,

J. B. JOHNSON,

Attorney General.

CORPORATIONS—FOREIGN, TWO—CANNOT HAVE  
SAME NAME

December 8, 1926.

*Hon. H. Clay Crawford,  
Secretary of State,  
Tallahassee, Fla.*

Dear Sir:

At the request of Messrs. Reynolds, Rogers & Towers, Attorneys, of Jacksonville, Florida, you have submitted to me their letter to you dated December 7th, 1926, reading as follows:

"The above named company, a corporation under the laws of Ohio, now has a permit issued by you to transact business in Florida. The same parties in interest are also incorporated under the name, The National Cash Register Company under the laws of Maryland. The company now wishes to withdraw the Ohio Company from Florida, surrender the permit and have the same revoked, and wishes to obtain a permit for the Maryland Company to transact business in Florida. We are informed that you have ruled that the permit of the Ohio Company cannot be surrendered and revoked, without a dissolution of the company, and that a permit will not be granted to the Maryland Company, because the name is the same as that of the Ohio Company. The National Cash Register Company is not in a position to dissolve the Ohio Company, and we are writing to ask if you will issue a permit to the Maryland Company if the Ohio Company shall give its consent.

"There appears to be no objections to this procedure. Section 4102 of the Revised General Statutes prohibits the issue of a permit to a foreign corporation under a separate name which is the same as that of any *corporation organized or existing under the laws of Florida*. As both of these corporations are foreign corporations, neither of them is organized under the laws of Florida, and both consent, it does not

appear that the issue of permits to both of them would be contrary to law. In fact, it seems that the refusal of a permit to the Maryland Company would be unreasonable, and would deprive the State of nearly \$3,000.00 in fees.

"It seems to us that the intent of and reason for Section 4102 and similar laws, is to protect the corporate names of Florida Corporations against appropriation by other corporations. It also appears that under the General Laws and comity the State is under an obligation to protect the names of foreign corporations doing business in the State under permits, but it does not appear reasonable to deny to a foreign corporation a permit to transact business in the State, in such a case as this, where it is incorporated under the same name in several States, and the company having a permit is ready to give its written consent.

"We would appreciate it very much, if you would refer this matter to the Attorney General for a decision if the exact question has not yet been decided by him."

The Laws of Florida providing for permits to foreign corporations to do business in this State do not provide any method or means by which such corporation can cancel out said permit or withdraw from the State of Florida except that their permit can be revoked in case they should amend their charter or increase their capital stock and fail within 30 days to file such amendment or notice of increase with the Secretary of State. Upon such failure, within 30 days, the Secretary of State is authorized to revoke their permit.

Aside from this provision, there is no provision of the Statutes authorizing the withdrawing of corporations to do business in Florida. Under the General Corporation Act, Chapter 10096,, Acts of 1925, there is this provision:

"No corporation shall be allowed unless it has a name that will distinguish it from any other corporation authorized to engage in business in this State, and shall be approved by the Secretary of State."

Section 4102, Revised General Statutes, provides that:

"No permit under this article shall be issued to any foreign corporation to transact business or acquire, hold or dispose of property in this State under any corporate name which is or may be the same as the corporate name of any corporation organized or existing under the laws of the State of Florida, or so nearly similar thereto as to cause or tend to cause confusion."

The above words: "organized or existing under the laws of the State of Florida" would in my opinion include any foreign corporation who had secured a permit and had been authorized to do business under the laws of this State. The law does not give the Secretary of State the right to say when a foreign corporation has ceased to do business in this State. Neither does the law give the foreign corporation the right to withdraw at pleasure after they have once qualified. There may be obligations and liabilities existing that could not be determined without a judgment or decree of a Court.

The National Cash Register Company of Ohio and the National Cash Register Company of Maryland, having identical names, should not be allowed to qualify in Florida unless there were some distinction to differentiate them. I can readily see where a confusion might arise, if they were both allowed to come into the State and transact business. If they would add to the name of either company the words "of Maryland" or "of Ohio" the distinction would be sufficient to allow them to secure a permit.

I sometimes think that it would be wise to amend this Foreign Corporation Law so as to allow foreign corporations to withdraw and clear our records, saving the rights of any parties where liabilities or obligations might exist.

This confusion of names has come up before and we have held to the same opinion.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## COMMON CARRIERS—ASSESSMENT OF TAXES

January 8, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

In the matter of assessment of "appurtenant supplies" against the Atlantic Coast Line Railroad Company, the Florida East Coast Railroad Company, and Seaboard Air Line Railroad Company, respectively, for the years 1922 and 1923, I have considered the various questions involved in the pending suits filed by said railroad companies for injunctions restraining collection of the taxes levied pursuant to said assessments; and am of the opinion that the best interests of the State will be subserved by an agreed settlement upon the basis of payment of the said taxes levied for 1923, and that thereupon the payment of such taxes for 1922 may be enjoined by consent decree. I recommend settlement of said suits on this basis.

Very truly yours,

RIVERS BUFORD,  
Attorney General.

## GASOLINE TAX—WHEN SHOULD BE PAID

January 9, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

In reply to your letter of this date, supplementing your letter of the 8th instant, in which you state you are advised by Mr. Pledger of the Oil Division of the Office of Commissioner of Agriculture that the car of gasoline referred to in your letter of the 8th instant, was shipped to Pensacola in tank barge



consigned to Sherrill Terminal Company; that the contents of the tank barge were transferred to tank cars in Pensacola and then delivered in such tank cars to Sherrill Oil Company; and that Sherrill Oil Company then sold this car of gasoline to Weiss-Patterson Lumber Company.

If the above is a true statement of facts, then the shipment was divested of its interstate character when it was taken from the original shipping package and transferred to several other packages, to-wit: Tank cars, by the consignee and was then delivered by the consignee to a second entity, to-wit: Sherrill Oil Company; and upon Sherrill Oil Company making sale of such commodity in the new package made up within the State of Florida, it became liable for the enforcement of the 3 cent per gallon privilege tax on the sale of gasoline. If the tax was paid by Sherrill Oil Company, then it should not be paid again to the State by the purchaser from Sherrill Oil Company.

If this tax on a part of the contents of the car referred to has been paid by the purchaser from Sherrill Oil Company, then the payment so made should be deducted from the amount due by Sherrill Oil Company based upon the full contents of the car.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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GASOLINE TAX—AMOUNT TO BE COLLECTED

January 9, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of January 8th enclosing a letter from Sherrill Oil Company of Pensacola, Florida, ad-

dressed to Hon. Nathan Mayo, Commissioner of Agriculture, under date of January 1st, 1925, and asking my advice as to whether or not the car of gasoline referred to in the letter from Sherrill Oil Company is subject to the enforcement of the provisions of Chapter 7905, Acts of 1919, commonly known as the *Gasoline Inspection Law*, and further requesting my opinion as to whether or not the tax, authorized under the provisions of Chapter 9120, Acts of 1923, of 3 cents per gallon is collectible upon this car of gasoline, I beg to say:

There is quite a difference between that tax authorized by Chapter 7905, Acts of 1919, and that which is authorized under Chapter 9120, Acts of 1923.

The tax contemplated under Chapter 7905 is for the inspection of a commodity which is to be consumed by citizens of this State, which inspection is for the protection of the citizens of the State, and the purpose is to prevent the placing on the market for consumption by the public of a dangerous, spurious or inefficient article. Under the police power of the State this inspection may be enforced as to all of such commodities which are sold to or purchased by any person in the State of Florida, and therefore, the inspection tax is collectible upon such commodities whenever they are purchased by any person within the State and are delivered to such person for consumption.

Chapter 9120 authorizes the collection of a privilege tax on all of the commodities mentioned in the Chapter when the same, having been divested of their interstate character, are offered for sale in the State of Florida. It appears from the facts as set forth in the correspondence submitted by you that the car POX No. 9066, handled October 3, 1924, with net gallonage of 8,108, was an interstate shipment ordered and shipped from a point beyond the limits of this State to Weiss-Patterson Lumber Company of Pensacola, Florida, for the private consumption of the consignee and that the same was delivered as an interstate shipment to the consignee, no part of which was, after having been divested of its interstate

character, offered for sale or resold, but was to be used for illuminating, heating, cooking or power purposes by the consignee within the State of Florida.

Under this state of facts, it is my opinion, that the tax authorized by Chapter 7905 for inspection of  $\frac{1}{8}$  of 1 cent per gallon is chargeable and collectible in this case, and that the tax of 3 cents per gallon authorized under Chapter 9120, Acts of 1923, is not chargeable or collectible in this case.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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#### GASOLINE TAX—STATE ENTITLED TO COLLECT

February 2, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I have your inquiry of January 30th as follows:

“Weiss & Patterson Lumber Company, a citizen of Florida bought a car of gasoline from the Alabama Branch Office of the Sherrill Oil Company, a Florida corporation doing business in Florida and Alabama, purchaser paying for same in Alabama and on basis F. O. B. Alabama point. The Alabama Branch of Sherrill Oil Company is supposed to have bought this car of gasoline from the Pure Oil Company, a Delaware corporation on basis C. O. D. and F. O. B. Alabama point. Pure Oil Company makes delivery in Florida to Weiss & Patterson Lumber Company from stock of gasoline owned by it and stored at Pensacola in the tanks of the Sherrill Terminal Company.

“Now, under this statement of facts, would the tax of

three cents a gallon be collectible in this State? Stating the facts a little differently as agreed to, it is as follows:

"A. Citizen of Florida.

"B. Florida corporation doing business in Florida and Alabama.

"C. Florida corporation doing storage business in Florida.

"D. Foreign corporation doing refining business outside the State.

"A. buys gasoline from Alabama branch of B. domestic corporation.

"D. ships gasoline from refinery outside the State in barges to C. which is transferred from barges in the State to storage tanks of C. within the City of Pensacola, the gasoline continuing the property of D. the shipper. On order of Alabama Branch of B. to D. the gasoline is transferred from the tanks of C. in the State to tanks of A. within the City of Pensacola and paid for outside of the State, probably through check by mail.

"Is the State entitled to three cents per gallon gasoline tax under such circumstances?"

In my opinion, the State is clearly entitled to collect the three cents per gallon tax upon the gasoline sold and delivered under the stated circumstances. No question of interstate commerce is involved in such a transaction. When the gasoline shipped by D reached its destination at Pensacola and was there stored and held for delivery as and when purchases thereof were made, it ceased to possess any characteristic of interstate commerce.

In effect the transaction is simply a purchase by A. from B. of gasoline which the latter in turn purchases from D. which delivers it from a stock there on hand and kept for sale in Pensacola.

Whether or not a transaction involves interstate commerce is to be determined by the character and situation of the commodity dealt with, not by the residence of the participants.

Very truly yours,

RIVERS BUFORD,

Attorney General.

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MOTOR TRUCKS FOR HIRE—NON-RESIDENTS MUST  
PAY LICENSE TAX

March 5, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I have your request in substance that I advise you whether or not a non-resident contracting with a resident of this State for hauling road material over the public highways of this State on Trucks is, under the provisions of Chapter 9153, Acts of 1923, required to pay the non-resident for hire rate for license tags for such trucks when it appears the contractor, a resident of the State of Florida, will, under his agreement with the hauling contractor, be required to pay the amount of the license tax.

It is my opinion the provisions applying to non-resident for hire license tags apply and it makes no difference what agreement the respective parties to the contract may have with one another.

I do not think it was the legislative intent that Section 1020, Revised General Statutes of Florida, as amended by Chapter 9155, Acts of 1923, should apply to commercial ve-



hicles, but it was only intended to apply to vehicles being used for private conveyance.

Yours very truly,  
RIVERS BUFORD,  
Attorney General.

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AUTOMOBILE LICENSE TAX—TRUCKS—REGISTRATION BY NON-RESIDENTS—PAYMENT FOR CERTAIN PERIOD

March 26, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

In re: Mutual Transit Co. vs. Amos, as Comptroller, etc., et al.

In reference to the matters involved in the above mentioned cause, I beg to advise as follows:

1. A State can not lawfully impose higher taxes upon motor vehicles operated by citizens of other States than it imposes upon like vehicles operated by its own citizens, under like circumstances or in like manner. For that reason Chapter 9153, Laws of Florida, Acts of 1923, is violative of Section 2 of Article IV of the Constitution of the United States. This has been so often decided by the Supreme Court of the United States as to preclude further question.

2. Under the provisions of Section 1020, Revised General Statutes of Florida, as amended by Chapter 6155, Laws of Florida, Acts 1923, non-residents of this State, other than foreign corporations, upon compliance with the requirements of said Section, as so amended, are entitled to register and to receive license tags for motor vehicles operated by them for

a limited period and at a proportional charge therefor, as in said Section provided. And this applies to trucks and passenger vehicles alike, and whether operated for hire or only for private use. (Rev. Gen. Stat. Sec. 1006.).

3. The motor trucks of complainants are being operated for hire, and subject to the license tax imposed by the statute upon motor trucks for hire owned or operated by non-residents. That the Legislature has seen fit to grant non-residents greater privileges than is allowed citizens and residents of Florida is a question of policy and does not render such discrimination against them invalid.

Assuming the allegations of facts contained in complainants' bill of complaint to be true, and for the above stated reasons, I am of the opinion that said complainants are entitled to registration of and license tags for their several motor vehicles as motor trucks for hire for such limited period as may be applied for in accordance with the provisions of Revised General Statutes. Section 1020, as amended by Chapter 9155, Acts of 1923, and at a proper proportion of the annual charge imposed by law upon residents of this State on motor vehicles of like class and weight when kept or operated for hire.

Since complainants have made application for a proportional license for a period of four months, you are authorized by law to register such vehicles and issue license tags therefor for such period at one-third the charge which would be lawfully imposed were complainants residents of this State.

I therefore recommend the registration of said motor trucks and the issuance of license tags therefor upon payment of the license tax of \$48.50 for each of such vehicles, since no greater sum may lawfully be demanded therefor. Further litigations would serve no purpose other than accumulation of costs.

Very truly yours,

RIVERS BUFORD,  
Attorney General.

BANK DIRECTORS—PERSONAL LIABILITY OF—IN  
CASE OF LOSS

March 30, 1925.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I have your inquiry of the 27th instant as follows:

"Will you please give me your opinion as to the personal liability of directors of a bank or trust company for losses sustained by the institution as a result of their negligence, carelessness, or lack of performance, or bad judgment in the exercise of the discharge of their duties as such directors."

In reply I may say that if such directors act in good faith and with ordinary prudence they are not liable for losses resulting from mere errors of judgment, but, in my opinion, when they commit an error of judgment through mere recklessness or want of ordinary care and prudence, they may be held liable for the consequences. Clearly they would be so liable for resulting losses where they knowingly exceed their authority, and that without reference to the question whether or not what they did might be justified on the principle of reasonable care.

It may be stated, as a general rule, that "it is the duty of a director to know the condition of his bank and see that its affairs are honestly and properly managed. He can not shirk this duty and avoid liability." And that such directors "are personally responsible for frauds or losses resulting from a want of reasonable care or attention to the duties of their trust."

Ordinary or reasonable care, the want of which would render directors personally liable is "that degree of care which ordinarily prudent and diligent men would exercise under similar circumstances."

No hard and fast rule can be laid down as to what acts or omissions will constitute such a degree of negligence or want of reasonable care as to render directors personally liable for losses resulting therefrom, but each case must be determined in view of all the circumstances thereof.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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### FRATERNITY PROPERTY—TAXATION

April 3, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 2nd with which you transmit a letter from Hon. Robt. W. Davis, Tax Assessor of Alachua County, inquiring whether or not College Fraternities' property is exempt from taxation under the provisions of Section 697, Revised General Statutes of Florida, I beg to say:

Whether or not the property of College Fraternities is exempt from taxation depends entirely upon whether or not such organizations are educational, literary, benevolent, charitable, or scientific institutions. Such organizations could not be termed either educational, literary or scientific institutions, but it may be some of them are benevolent or charitable institutions. Whether or not an organization comes under either of these classifications will depend entirely upon the provisions of its charter.

It is my opinion for an organization to be exempt under either of these classifications, its main purpose must be either

benevolence or charity. If the organization is merely a secret society organized to promote the welfare of its members, it would not be entitled to the exemption accruing to institutions coming within either of the above classifications.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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GASOLINE TAX—EXEMPT

May 27, 1925.

*Hon. Ernest Amos.  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of May 25th enclosing letter from Hon. Wm. Fisher of Pensacola in regard to Sherrill Oil Company a part of which letter is as follows:

“The Sherrill Oil Company has a source of supply of gasoline in New Orleans, La., and they can in the regular and usual course of their business make shipments in tank car lots of gasoline from their source of supply in New Orleans, in filling any contracts the company might have with the Navy Yard here for instance. I am sure under such circumstances the tax would not be collectible since it seems to me clear that the gasoline is sold in interstate commerce being sold by Sherrill Oil Company to the United States Government and delivered in specific tank car shipments from New Orleans to the United States Government here in Florida and coming to rest at no place within this State, except in the hands of the purchaser.”

It is my opinion that a shipment of gasoline handled as outlined in the above quoted paragraph is not subject to Flor-



ida sales' tax, but is exempt because of its interstate character.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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CORPORATIONS—FOREIGN—EXERCISE OF TRUST  
FUNCTIONS

May 27, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your communication of the 26th instant, asking my opinion as to whether or not a foreign corporation, that is, a corporation organized in some State other than the State of Florida or under the laws of a foreign country, may lawfully engage in the business of writing title insurance in the State of Florida, I beg to say:

Section 4185, Revised General Statutes of Florida, defines those powers which are peculiar to trust companies and, therefore, constitute trust functions under the laws of the State of Florida.

Sub-section 14 of Section 4185, Revised General Statutes of Florida, reads as follows:

“To exercise the powers conferred on and to carry on the business of a safe deposit company; to examine, make and certify abstracts of title, and to make insurance of every kind pertaining to or connected with titles to real estate, and to make, execute, and perfect such and so many contracts, agreements, policies and other instruments as may be required therefore: Provided, such powers and purposes are

enumerated in the charter: Provided, further, that in order to exercise the extra powers conferred and to cover extra liability of companies operating under this article, said companies shall deposit with the State Treasurer an additional security of ten thousand dollars in cash or mortgages, deeds of trust of real estate or United States, State County or Municipal bonds, or surety bond by any company licensed to do business in this State, all of which security shall be approved and kept by the State Treasurer in Trust for said company and for which he shall give his official receipt, embracing a full and complete list of such securities and the values of the same at the time received, said securities shall be held subject to the payment of any judgment or decree which may be rendered against said company, on account of the privileges herein granted: Provided, further, that the charges made by said company for making abstracts shall not exceed the current prices charged by other firms, corporations or individuals for like service."

Chapter 9287, Acts of 1923, provides among other things as follows:

"That from and after the passage of this Act it shall be unlawful for any corporation or association to exercise any of the trust functions now prescribed by the laws of the State of Florida to be exercised by trust companies or associations, or to exercise any of the duties, powers or enjoy the emoluments, profits or benefits which may be granted or may have heretofore been granted by the Legislature of the State of Florida to corporations or associations without having first obtained a charter under the Laws of the State of Florida granting the exercise of such powers, duties and functions."

It therefore appears that Chapter 9287, Acts of 1923, precludes any corporation other than those organized under

the Laws of the State of Florida from engaging in the business of writing title insurance in this State.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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STATE LANDS--SALE FOR TAXES VOID

June 1, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of this date in regard to taxation of certain lands in Okeechobee County in which you enclose telegram from J. H. Walker, Jr., Tax Assessor, I beg to say it is my opinion under the facts stated in your letter it appearing therefrom that the lands referred to were sold for taxes and that such sale was based upon an assessment made while title to such lands was in either the Trustees of the Internal Improvement Fund or in the Board of Commissioners of Everglades Drainage District, that the tax was not assessable for State and County purposes at the time and, therefore, the certificate should be cancelled and the Tax Assessor advised to extend the assessment for State and County taxes on the roll for 1925.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

TRUSTEES I. I. FUND—LANDS SUBSEQUENTLY  
VESTED IN—EXEMPT FROM TAXES

June 6, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 2nd which reads as follows:

"A parcel of land sold for State and County taxes, say in the year 1918, and the same tract of land sold for Everglades Drainage Taxes in 1920 and the title vested in the trustees of the Internal Improvement Fund in 1922 under the sale of 1920 and thereafter the title of the trustees of the Internal Improvement Fund acquired as aforesaid, was conveyed to John Doe.

"Was the tract of land which was sold in 1918 for State and County taxes subject to taxation for State and County taxes up to the date that the tax title was vested in the trustees of the Internal Improvement Fund, and could such back taxes be collected in the redemption of the tax certificate held by the State, as well as the State and County taxes for the years beginning January 1st after the title of the trustees of the Internal Improvement Fund had been conveyed to John Doe. In other words, was the exemption from State and County taxes in force only as to State and County taxes during the period of time the title was vested in the trustees to the time the title was passed from the trustees to John Doe? Would the owner of the land, in making redemption from the sale for State and County taxes in 1918, have to pay the subsequent omitted taxes for all years except the year or years in which the title was vested in the trustees of the Internal Improvement Fund under the sale of the tract to the trustees for unpaid Drainage Taxes?"

I beg to advise under the facts above stated, the lands referred to would be subject to the State and County Tax Certificate issued under a sale for taxes of 1918 and subsequent taxes up to the time that the title became vested in the Trustees of the Internal Improvement Fund, and if the certificate was otherwise valid then the certificate, together with the taxes for the interim between the time when the land was sold and the time at which the title vested in the Trustees of the Internal Improvement Fund, constitutes a lien against the land. The exemption from State and County taxes only obtained from the time the title vested in the Trustees of the Internal Improvement Fund until the time it was conveyed by the trustees to a third person.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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#### TAX ASSESSORS—DUTIES OF

June 26, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 25th in which you ask my construction of Sections 736 and 738, Revised General Statutes of Florida, in so far as the same apply to the duty of the County Assessor of taxes to enter the assessment in different columns on the assessment roll and as to whether or not the State Comptroller has authority to require the Tax Assessor to add together the several assessments and to carry out the result in a column prepared on the roll for that purpose, I beg to say:

After consideration of the contents of the above named Sections I am of the opinion that the Comptroller is not au-



thorized to require the County Tax Assessors to add the assessments for various purposes together and carry the same out in a column showing a total of the tax assessments. It is my opinion that such a provision of the Statute would be a wise and salutary one and I am sure if this matter should be called to the attention of the Legislature the Statute would be amended so as to accomplish this purpose.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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SCHOOL FUNDS DEPOSITED IN NATIONAL BANKS  
—TAX COLLECTOR RELIEVED OF  
RESPONSIBILITY

June 30, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 20th enclosing letter from Hon. C. H. Gray, County Superintendent of Public Instruction of Gadsden County, in regard to deposit made by Hon. C. H. Curtis, Tax Collector of said County, to the credit of the School District Fund, as follows:

Credit of Special Tax District No. 1.	\$ 119.45
Credit of Special Tax District No. 2.	10.72
Credit of Special Tax District No. 3.	13.46
Bond District No. 3.	8.42
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Total	\$ 152.05

Inasmuch as a National Bank is involved in this controversy I can not say just what the ruling will be as to the status of the claim. If this had been a State Bank we would hold that the money received from the payment of the check deposited by Mr. Curtis passing through the hands of the bank constituted a trust fund received for the purpose only of transmitting, and that the same constitutes a preferred claim to be paid in full by the Receiver.

The other question involved is that of fixing the responsibility and status of the claim. It is my opinion that the Tax Collector is discharged from further obligation in regard to this item, in that he deposited his check in a proper depository and the check upon presentation was duly paid from funds standing to his credit in the bank upon which the check was drawn. The check was deposited to the credit of certain Special Tax School Districts. Therefore, the claim is now one to be adjusted between the County School Board of Gadsden County, Florida, The Havana State Bank, of Havana, Florida, and the Receiver of the First National Bank of Quincy, Florida. In my opinion, the claim should be delivered as a preferred claim and should be paid in full to the Havana State Bank by the First National Bank of Quincy, Florida. But in the event that the authorities having control of this matter should determine that the same is not a preferred claim, but a common claim, then whatever sum is realized from said claim and is paid to the Havana State Bank should be pro-rated between the several Districts to the credit of which the original check was deposited and the deficit charged back to the respective School Districts.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

CORPORATION ACT 1925—TRUST COMPANIES NOT  
AFFECTED BY

July 15, 1925.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I note your inquiry of the 13th instant, as follows:

"Under the proviso of Paragraph 10 of Section 3 of the Corporation Law of 1925, banks and trust companies are expressly excluded from the provisions of the Act.

"Section 4121 et seq. seem to contemplate that banking and trust companies shall be incorporated under letters patent the same as heretofore. However, the Secretary of State seems to hold otherwise."

And also note that you desire an official expression from this office on the subject.

My opinion is that trust companies are not affected by the provisions of the New Corporation Act.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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INSPECTORS—PAYMENT OF SALARIES

August 7, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.,*

Dear Sir:

Replying to your letter of August 5th I beg to say:

It is my opinion that Inspectors appointed by the Governor for the Division of Inspection, as provided by law as the same may be recommended in writing by the Commissioner of Agriculture, shall be paid their salaries monthly in pursuance of the provisions of the Constitution, contained in Section 3, Article 16, as amended in 1921.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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GASOLINE LEAGUE—PAYMENT OF GASOLINE TAX

August 24, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of August 14th asking my opinion as to whether or not gasoline distributed by the so called "Gasoline League" of Bradenton to its members will be subject to the payment of the tax prescribed by the Statutes of Florida upon gasoline sales in this State, I beg to say:

It is my opinion that the arrangement, as outlined in Mr. Turner's letter to you and as stated in your letter to me, constitutes a retail dealing in gasoline without profit to a limited patronage.

I gather from the statements contained in the above mentioned communications that each member is furnished an identification card and that the members buy and pay for the gasoline which is originally held by a trustee.

The gasoline is not delivered to the consumer in the original shipping package, but is drawn from the tanks and is delivered to the consumer from a filling station from which it

has been transported from the tanks. The consumer does not purchase in bulk nor receive a bulk shipment, but the consumer purchases at retail from his association and the mere fact that he does not pay his association a profit can in no way be construed to relieve the association of paying the taxes required by the State for engaging in and carrying on such business. Any other construction appears to me would be unconscionable.

Yours very truly,  
RIVERS BUFORD,  
Attorney General

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DEPARTMENT OF AGRICULTURE—SALARY OF  
CHIEF CLERK

September 5, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 2nd I beg to say it is my opinion that the Legislature fixed the maximum salary payable to the Chief Clerk in the office of the Commissioner of Agriculture in the Appropriation Bill and that no additional compensation can be lawfully paid to the Chief Clerk in the office of the Commissioner of Agriculture, or the Chief Clerk in any office for services performed in or under the supervision of the Department of which he is Chief Clerk.

In my opinion, it is the duty of the Chief Clerk in any Department to perform any and all services which he can and may perform in that Department for his compensation as Chief Clerk. It is my opinion that if a Chief Clerk could draw extra compensation for services performed in the Department that then the Administrative Officers, the head of the Department, under like reason could draw extra compensa-



tion for the performance of any like service. The Bureau of Immigration is a Division of the Department of Agriculture and upon its creation in that Department it became the duty of the Commissioner of Agriculture and of the Chief Clerk in that Department and probably of attaches in the Department to perform such services and do such things as may be required to administer the Act without additional compensation.

Yours very truly,  
**RIVERS BUFORD,**  
 Attorney General.

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**GASOLINE TAX—WAIVING PENALTIES FOR  
 NON-PAYMENT OF**

October 26, 1925.

*Hon. Ernest Amos,  
 State Comptroller,  
 Tallahassee, Fla.*

Dear Sir:

I have just received the enclosed letter from Mr. Dewey A. Dye, State's Attorney, Bradenton, Florida, *in re* action filed by the Sixteen Cents Gasoline League of that place.

Inasmuch as the dealer in this case appears to have been mislead in regard to the legal status of the matter and upon finding that such was the case has voluntarily dismissed the suit and proffered to pay the tax, I recommend that if you can consistently do so that you waive the payment of the penalties. I think you can do this legally in consideration of the dismissal of litigation. It is also held that the application of penalties largely depends upon whether or not the withholding of the payment of the tax was in good faith and it may reasonably be assumed that it was so in this case.

Yours very truly,  
**RIVERS BUFORD,**  
 Attorney General.

## TAX ASSESSOR—DUTIES

November 12, 1925.

Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Florida,

Dear Sir:

*In re* letter hereto attached from Messrs. Watson & Pasco, I beg to advise:

Previous to the enactment of Chapter 10040, the position taken by the Tax Assessor would have been correct, but this Act of 1925 authorizes the Assessor to correct any error in the tax roll either of omission or commission at any time regardless of whether the roll still remains in his hands or has passed on to the collector, and, therefore, it is my opinion that under the provisions of this Act the Assessor has full authority, and it is his duty upon application being made by the owner, to go to the tax roll and correct the error which, in this case, appears to have been one both of commission and omission. *Commission* in the assessment was entered in the column under "lands sold for taxes," and *omission* in the assessment was not entered in the proper column and the tax extended.

Whether or not this Act is valid is a question, according to the decision of our Supreme Court, which does not concern either the Tax Assessor or any other administrative official.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

## MOTOR VEHICLES—TAXES

November 25, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of November 23rd as follows:

“Section 1006, Revised General Statutes, as amended by Chapter 8410, Acts of 1921, defined ‘solid tires’ and ‘pneumatic tires’, in connection with the license rates to be charged on motor vehicles. As you will note these two were the only classifications provided, based upon the kind of tire with which the motor vehicle is equipped. Subsequently an Act was passed (Chapter 9154, Acts of 1923), which defined as ‘airless cushion tire’, and stated that such a tire should have a rate for license purposes based upon a certain per cent of the pneumatic tire rate.

“Chapter 10162, Acts of 1925, amending Section 1006, again defining classes of tires on motor vehicles for purposes of license as ‘solid’ and ‘pneumatic.’

“Will you kindly advise me if, in your opinion, the effect of Chapter 10182 Acts of 1925, is to repeal Chapter 9154, Acts of 1923, which fixed the rate on ‘airless cushion tires’.”

It is my opinion that the effect of Chapter 10182, Laws of Florida, Acts of 1925, supersedes Chapter 9154, Laws of Florida, Acts of 1923, insofar as the same applies to classification of tires on motor driven vehicles.

Yours very truly,

RIVERS BUFORD,

Attorney General.

AVIATION ACT—LICENSE TAXES AND OTHER FEES  
TO CONSTITUTE SEPARATE FUND

December 11, 1925.

*Hon. Ernest Amos,  
State Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 11th instant, as follows:

"Please give me your official opinion if Section 6, or any part of the Act, of Senate Bill Number 90, Extraordinary Session, known as Commercial Aviation Act, is sufficient to appropriate money from the State Treasury received from registration under the same in view of Section 4 of Article IX of the Constitution requiring specific appropriations by the Legislature for the purpose of withdrawing funds from the Treasury."

received. I also acknowledge receipt of printed copy of this Act attached to your letter above quoted.

This Act is defective in two particulars: First, it does not provide for the deposit in the State Treasury of the proceeds of the license and fees collected under the Act; Second, it does not provide for the expenditure of the proceeds from the licenses and fees collected.

To operate under this Act it will be necessary to keep this money in a separate fund. These monies should not be deposited with the State Treasurer and should not be covered into another fund of the State. I think it was clearly intended that the monies received from these licenses and fees should be used in paying the expenses necessary to properly carry out the purposes of the Act."

In the case of *Lainhart vs. Catts, et. al.*, reported in 73 Fla. 735, the Supreme Court held:

"An appropriation may be made by setting apart and

especially appropriating the money derived from a particular source of revenue to a particular use."

We would have to strain a point to say that the monies arising under the provisions of this Act have been appropriated for any purpose whatever. The Act itself does not direct what shall be done with this fund. It makes no appropriation for paying the expenses of administering the provisions of the Act, it fails to fix the salary or fees of inspectors, or employees.

Under the circumstances my advice is that the proceeds arising from the license and fees be kept in a separate fund and used for the purpose of paying the actual and necessary expenses incurred. If this can not be done, then the entire Act is inoperative.

Yours very truly,

J. B. JOHNSON,

Attorney General

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### MOTOR VEHICLES—TAXES

December 16, 1925.

*Hon. Ernest Amos, Comptroller,  
Capitol Building,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 16th, asking my opinion and construction of Chapter 10182 of the Acts of 1925, is acknowledged, your letter reading as follows:

"Section 1006, Revised General Statutes, as amended by Chapter 6410, Acts of 1921, defined 'solid tires' and 'pneumatic tires', in connection with the license rates to be charged on motor vehicles. As you will note these two classes were the only classifications provided, based upon the kind of tire



with which the motor vehicle is equipped. Subsequently an Act was passed (Chapter 9154, Acts of 1923), which defined an 'airless cushion tire', and stated that such a tire should have a rate for license purposes based upon a certain per cent of the pneumatic tire rate.

"Chapter 10182, Acts of 1925, amending Section 1006, again defining classes of tires on motor vehicles for purposes of license as 'solid' and 'pneumatic.'

"Will you kindly advise me if, in your opinion, the effect of Chapter 10182, Acts of 1925, is to repeal Chapter 9154, Acts of 1923, which fixed the rate on 'airless cushion tires'."

It is my opinion that Chapter 10182 did not repeal or affect the provisions of Chapter 9154, Acts of 1923. This latter Chapter was enacted for the purpose of making a classification that was not included in the other Acts. While Chapter 10182 repeals all laws and parts of laws in conflict therewith we do not find any conflict between the provisions of Chapter 9154 and Chapter 10182.

Perforated titles should take the classification as provided in the Act of 1923.

Yours very truly,

J. B. JOHNSON,  
Attorney General

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#### MOTOR VEHICLES—LICENSE TAX

January 6, 1926.

*Hon. Ernest Amos,  
Comptroller,  
The Capitol,  
Tallahassee, Fla.*

Dear Sir:

Your favor of January 6th reading as follows, received:

"Section 1013 of the Revised General Statutes, as amended by Chapter 8410, Acts of 1921, states that it shall be unlawful for any County or Municipality to collect any license or registration fee on any motor driven vehicle, trailer or semi-trailer, motorcycle side car in this State. It has been brought to my attention that several incorporated cities and towns have ordinances, under which a license is collected on motor busses and other motor vehicles operating for hire.

"While I have not had opportunity to read any of these ordinances, I am advised that most of them are so worded that it is evident the purpose was to avoid direct conflict with the State Law above mentioned by having the license apply to 'the business of hauling passengers or commodities for hire.'

"When such cases have been brought to the attention of these Municipalities, I have received the reply that the ordinance did not impose a license on motor vehicles, but on the business of hauling, without reference to the kind of vehicle.

"Will you kindly advise me if an incorporated city or town can collect a license on a motor vehicle, which has been registered and paid the proper State license tax, even though the ordinance is so worded as to apparently avoid direct conflict with the Statute."

Section 6 of Chapter 8410, Acts of 1921, amending Section 1013 of the Revised General Statutes, reads as follows:

"1013. *Counties and Municipalities May not Impose Licenses on Motor Vehicles, Trailers, and Semi-Trailers and Motorcycle Sidecars.* It shall be unlawful for any County or Municipality to collect any license or registration fee on any motor-driven vehicle, trailer or semi-trailer, or motorcycle sidecar in this State."

You will note from the language of this Section that it shall be unlawful for any County or Municipality to collect

any license or registration fee on any motor-driven vehicle. The rate of license on motor vehicles for passengers is graded at so much per passenger. On motor vehicles for hire the rate is decidedly higher than for private use.

Our opinion is that it was intended that no other license should be required from the operators of these vehicles. That, however, is not a question for your office to decide, as you are only exercised about the collection of the license and registration fee provided for in the Act. Persons who are required to pay this extra municipal license, if they so desire, should contest the same and get a decision of the Courts on it.

Yours very truly,  
J. B. JOHNSON,  
Attorney General.

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REAL ESTATE BROKERS AND SALESMEN—LICENSE  
TAX

January 19, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 19th inst., as follows:

"I am transmitting herewith a telegram, addressed to this office by the Palm Beach Post, which has reference to the advertising of occupational licenses issued to real estate brokers and real estate salesmen, under the Act of 1925, while the County Judges were issuing the licenses.

"Kindly advise me whether or not the Act, under which the County Judges collected these real estate brokers and real estate salesmen's licenses, authorizes the publication of a list of the licenses so issued by the County Judge."

The Real Estate Brokers and Salesmen's License Law, same being Chapter 10233, Acts of 1925, did not provide for the publishing of the names of persons obtaining such licenses. The licenses paid under this Act would not come under the same provisions governing occupational licenses generally.

Very truly yours,  
J. B. JOHNSON,  
Attorney General

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HOTEL—ASSESSMENT OF TAXES ON REAL AND  
PERSONAL PROPERTY

January 19, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 19th inst., as follows:

"I am transmitting herewith a letter from Hon. R. F. Bowden, Tax Collector, Duval County, in reference to tax assessment made against Hotel St. Albans, for the years 1923 and 1924. I would be pleased to have you give me your opinion as to whether or not the County Attorney is correct in his construction of the law.

"In so far as concerns that part of the letter referring to back taxes, the law has been uniformly held to be that no such assessment can be made. Real estate, as you are aware, may be assessed for back taxes, but not personal property."

Under Chapter 9180, Laws of Florida, Acts of 1923, the Tax Assessor has the authority of law to assess both real and personal property for a period of three (3) years back

where such property has escaped taxation for said three years and could legally have been assessed. In making such back assessments the Tax Assessor should follow the provisions of said Act and clearly indicate on the roll each year for which such back assessment is made.

It is my opinion the Collector could enforce the Collection of the personal taxes assessed for the years 1923 and 1924 against the Hotel St. Albans provided this personal property was in existence and subject to taxation at the time. If this was the property of D. J. Conroy and was clearly subject to taxation, it should have been given in by him. If he failed to give it in, then he would not be allowed to question the assessment. If he did undertake to enjoin the collection, I am quite sure the Courts would require him to pay the amount of taxes assessed against the property before any relief would be granted.

Under the circumstances it might be well to make the back assessment for three years under the said Chapter 9180, Laws of Florida.

Very truly yours,

J. B. JOHNSON,

Attorney General

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#### CANALS AND HIGHWAYS—ASSESSMENT OF TAXES ON

March 29, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 27th inst., as follows:

"I am transmitting herewith a letter from Hon. H. L.



Snyder, Tax Assessor, Martin County, Stuart, Florida. in reference to exemption from taxation of the right of way of the St. Lucie Canal, and the right of way of Conners Highway. I am unable to find any exemption for either, but desire your opinion as to whether or not either or both are exempt from taxation, and if, as to the Conners Highway, you should hold that it is subject to taxation will you kindly advise me how the assessment should be made if the title is not in the owners of the Conners Highway, and they only have an easement or right to occupy the land, using it solely as a highway, without title.

"I present these questions in order that I may be able to advise the tax assessor what your opinion is on the subject."

The right of way of the St. Lucie Canal is not subject to taxation, being the property of the State of Florida held for public purposes.

In assessing the lands through which this canal runs, the assessor should assess each forty (40) acres for subdivision of section less canal right of way, giving the number of acres assessed. You will have to calculate the number of acres taken by the canal right of way and assess the balance to the owner.

In the matter of Conner's Highway, this is the property of a corporation known as "Conner's Highway, Inc." and this road should be assessed the same as real estate of corporations. The assessor will have to secure the description as best he can, as your office is not authorized to make the assessment of this highway.

Very truly yours,

J. B. JOHNSON,  
Attorney General

STATE INSTITUTIONS—MANNER OF PAYING  
SALARIES TO EMPLOYEES

April 3, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Mr. Amos:

I am in receipt of your favor of March 31st as follows:

"Owing to conditions regular salary vouchers for the ment of the professors, teachers, and employees, at the several institutions under the management of the Board of Control do not reach this office for audit and payment until near the middle of the month, and delays incident thereto following such meeting it frequently happens that persons do not receive their monthly compensation until near the end of the following month. While there is no delay in this office, oftentimes we are blamed with it and I am wondering if a plan could not be worked out whereby they might get relief and receive their monthly stipend at least during the first week of the month following due date.

"I have in mind a plan whereby the auditor of each institution could mail me a payroll giving the name of the person, the position occupied, and the amount received, immediately at the close of the month for which they are being certified. A duplicate of this payroll going to the Secretary of the Board of Control. Let this paper be the basis for the issuance of the warrant direct to the person to whom the same is due. Then I would give a list of the warrants issued, name of the person, number, and amount, and the fund from which it is drawn to the Secertary of the Board of Control, mailing the warrants direct to the auditors of the various institutions.

"As a basis for the issuance of this payroll the Board of

Control could at its first regular meeting authorize the auditor to make up payroll of the following named persons, spreading it on the minutes at the end of the month and certify it to the comptroller and the Board's Secretary. After the warrants are issued and reported to the Secretary at the succeeding regular meeting in the month following the period for which salaries are due they could ratify the act of the issuance of the warrants so stated and at the same time authorize the issuance of another payroll for that month at the expiration thereof, in the same manner as the preceding month. This would give a complete record history of the transaction and in my judgment would sufficiently comply with Section 617 of the Revised General Statutes touching upon the matter.

"Please bear in mind that the Board of Control doubtless now has a contract with many of its professors for next year's work, and the salaries are definitely fixed by contract and are usually the same for each month. Of course, this arrangement could not apply to bills that are changing or contracted for periodically or monthly, but is intended to apply only to salaries which under the constitution as to State Officers are paid on their own requisition.

"If I can render better service to those connected with these institutions I am anxious to do it."

Section 617 of the Revised General Statutes cited in your letter reads as follows:

"No moneys shall be expended for and on behalf of any of the said institutions, or any department thereof, except upon a written voucher drawn by the Board of Control, in duplicate, stating the nature of said expenditure, and the person to whom the same shall be made payable, which vouchers shall be submitted to the Comptroller of the State of Florida, and audited and approved by him, and upon such approval the Comptroller shall draw his warrant upon the State Treasurer for the payment thereof, transmitting duplicate of said vou-

cher approved by him to the Treasurer, and shall file the other duplicate of said voucher approved by him in his office. No voucher shall be issued or drawn by the Board of Control for the payment of any moneys except the same be approved by said Board in regular session and countersigned by the chairman and secretary thereof."

You will note the language of this Statute provides:

"No moneys shall be expended for and on behalf of any of the said institutions, or any department thereof, except upon a written voucher drawn by the Board of Control, in duplicate, stating the nature of the said expenditure. \*\*\*No voucher shall be issued or drawn by the Board of Control for the payment of any moneys *except* the same be approved by said Board in regular session\*\*\*"

There is no provision in this Section or in any other Section of this law that I find, which requires the Board of Control to wait until after the month's service has been rendered before approving the vouchers to be filed with you. As you state, contracts are made with the professors, instructors and employees at these institutions that possibly with few exceptions run for the period of a school year. Under these circumstances, it would be proper for the Board of Control at their regular meeting in any month to have made up and approved a list or payroll of their permanent employees. These approved payrolls or vouchers, if you prefer to designate them such, could be left with the auditor of the institutions or the Secretary of the Board of Control to be delivered to you at the end of each month and your warrants could then be ready for delivery on the first of the month instead of having to wait until the middle or end of the month.

Of course, these payrolls or vouchers, in isolated instances, might have to have some item changed by reason of the resignation of an employee, or of the death of an employee or for any other reason, and such change or correction could be made before delivery to you at the end of the



month. The Board of Control undoubtedly knows what the monthly salary is of each permanent employee. I think it would be perfectly legal if such a plan should be adopted.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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CHARITABLE INSTITUTION—EXEMPTION  
FROM TAXES

April 9, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 8th inst., as follows:

“I am transmitting herewith a letter from Mr. William M. Madison of Jacksonville, Florida, in reference to the exemption of certain property belonging to the Loyal Order of Moose, located in Orange Park, Clay County, Florida.

“Please give me your opinion as to whether or not the property will be exempt under Section 697 of Revised General Statutes of Florida.”

As I understand it, “MOOSEHAVEN”, the home of the Loyal Order of Moose located at Orange Park, Clay County, Florida, is a charitable institution pure and simple and it is not used in any particular for profit. It is my opinion that it is clearly exempt from taxation.

As to whether or not this Order owns property in addition to this home from which they derive a profit or which is



used for investment is something that I cannot say. They would not be entitled to an exemption of taxes on any property from which they derived a rent revenue or which is held for business investment or for profit.

Very truly yours,  
J. B. JOHNSON,  
Attorney General.

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# INTANGIBLE PROPERTY—ASSESSMENT OF

May 14, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your favor of the 13th inst., as follows:

“As you know, the Legislature of 1923 proposed Senate Joint Resolution No. 358, found on Page 487, Acts of 1923, which was ratified by the people at the following general election. This amendment provides that the Legislature shall provide for a uniform and equal rate of taxation, etc., but may provide for special rate or rate on intangible property, etc.

“The question has arisen as to whether or not this constitutional provision is in force and effect at this time. That is to say, this office holds to the view until the Legislature follows it up by making provision for taxation of this sort of property and defines what it is and the rates, etc., that the amendment is yet in abeyance, but in certain sections of the State a different view seems to obtain and assessments are being called into question as to their legality on account of the amendment.

"Kindly let me have yours views in the premises and very much oblige."

There is considerable doubt in my mind as to just what would be classed intangible property. I find very little authority on this subject. Intangible property might apply to franchises, good will of business, or property of that kind. We doubt very much if stocks, bonds and mortgages could be brought under the classification. Until the Legislature classifies intangible property for the purpose of taxation it is our opinion that all property taxable under the present Statutes of the State, including corporation stock, should continue to be taxed as provided for by Statute. This will be the only safe and reasonable course to pursue until the Legislature acts or until the matter should be settled by the Courts.

I have heretofore advised that stock in banks should be taxed as provided for by Statute.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### INTANGIBLE PROPERTY—EXEMPTION OF

May 27, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 26th inst., as follows:

"Under the third Paragraph of Section 697 R. G. S. property of educational, literary, benevolent, charitable and

scientific institutions within this State under certain conditions is exempt from taxation.

"Under this provision this office has held that the ground floor and other floors actually used by any institutions coming within the purview of the Act is exempt from taxation but no more. For instance, if the two upper stories of a seven story building are actually occupied for the purpose of a fraternal organization or an institution coming within the purview of the Act and the ground floor rented out and the rents, issues and profits thereof only used by the owning institution, in such a case only those floors shall be exempt from taxation, but that the remainder of the building, viz: four floors intervening between the ground floor and those used by the institution for its purposes that are rented out and used for purposes other than of the institution are taxable.

"To clarify the situation I will be glad to have your official opinion as to whether or not the holding of this office is in keeping with your interpretation of the Statute.

"In the case of a two story building where the upper story is used as a lodge room and the lower story rented out we hold that the whole of the building is exempt under such Statute."

The third Paragraph of the Section referred to in your letter reads as follows:

"Such property of educational, literary, benevolent, charitable and scientific institutions within this State as shall be actually occupied and used by them solely for the purpose for which they have been or may be organized, but property of such institutions which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation, nor shall any property held by them as an investment or for speculation be exempt from taxation: Provided, That this section shall not be construed to apply to the lower stories of charitable or benevolent in-

stitutions, necessarily using the upper stories of their lodge rooms and who rent the ground floor of such buildings, using said rents, issues and profits for the benefit of such charitable and benevolent purposes, or to the ground floor of public libraries, the rents, issues and profits of said ground floor being used for the benefit of said libraries."

You will note that the exemption from taxation of property of this class applies to the "property of educational, literary, benevolent, charitable and scientific institutions within this State as shall be actually occupied and used by them solely for the purpose for which they have been or may be organized." This portion of the third Paragraph of Section 697 defines what class of property shall be exempt. This Paragraph then further provides:

"\*\*\* but property of such institutions which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation, nor shall any property held by them as an investment or for speculation be exempt from taxation:\*\*\*"

The proviso in this paragraph, as I understand it, does not carry or provide for any exemption. This proviso reads: "\*\*\*\*That this *section* (you will note that it does not say 'this paragraph' but it is dealing with the entire section, which section is titled 'Property exempt from Taxation') shall not be construed to apply to the lower stories of charitable or benevolent institutions, necessarily using the upper stories of their lodge rooms and who rent the ground floor of such buildings, using said rents, issues and profits for the benefit of such charitable and benevolent purposes, or to the ground floor of public libraries, the rents, issues and profits of said ground floor being used for the benefit of said libraries."

As I construe this paragraph of Section 697, Revised General Statutes, it appears to me that the property to be exempt from taxation shall be used solely for the purpose for

which the society owning it is organized and where portions of said building are rented then the entire property would be subject to taxation. Transposing this proviso, as I understand it, it would read:

“\*\*\* That this section (providing for the exemption of property from taxation) shall not be construed to apply to lower stories of charitable or benevolent institutions.\*\*\*”

This is rather a nice question and we hesitate to place this construction on this provision but under the wording we believe that these properties, where they are only partly used for lodge rooms, etc., should be taxed.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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MOTOR VEHICLES OWNED BY NON-RESIDENTS  
—LICENSE

June 2, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of May 29th as follows:

“A case has come up in the administration of the Motor Vehicle License Law, which apparently involves the question of reciprocity between the States in the matter of motor vehicle licenses, and also the question of interstate commerce. The facts of the case are substantially as follows:

“Mr. Ben May, a resident of Dothan, Ala., operates a bus line from Dothan, Ala., to Panama City, Fla. Four motor vehicles are used in the operation of this line. Mr. May registered two of the motor vehicles in Alabama and has Ala-



bama license tags thereon, and registered two of the motor vehicles in Florida and has Florida 'for hire' license on these two vehicles. Passengers are carried for compensation from Dothan, Ala., to Panama City, Fla., and intermediate points. Occasionally passengers are carried from a point within Florida to a point within Florida on regular trip from the Alabama terminal to the Florida terminal.

It has been the ruling of this office, with reference to motor vehicle license, that the motor vehicle owned by a resident of another State, operating from a point within that State to a point in Florida, carrying only interstate passengers, will not be required to have Florida license tags thereon.

"The case of Mr. May, above cited, differs from those heretofore handled in two respects.

"First. Picking up intrastate passengers while on an interstate trip; and,

"Second. The fact that two of his motor vehicles (or half of the equipment) are registered in Florida with Florida license tags for hire.

"I will be glad to have you advise me your opinion with reference to whether the other two motor vehicles owned by Mr. Ben May, a resident of Alabama, and operated on the lines mentioned, should also be required to have Florida license tags for hire.

"Thanking you for an opinion on this point, I am,"

I have given the subject of your inquiry careful consideration and have made an exhaustive investigation of the Statutes involved, together with the question of whether the enforcement of our Statute as applied to interstate transportation of passengers for hire is a burden on interstate commerce and whether for that reason the same would be in violation of the commerce clause of the Federal Constitution.

Section 1007, Revised General Statutes, as amended by

Section 2 of Chapter 10182, Acts of 1925, provides:

"Every owner of a motor vehicle or vehicles, trailer, semi-trailer, or motorcycle side car, which shall be operated or driven upon the highways of this State, shall for each vehicle, or vehicles so owned, cause to be filed by mail or otherwise, in the office of the Comptroller of the State of Florida, a certified application for registration on a blank to be furnished by the Comptroller for that purpose,\*\*\*"

Section 1011, Revised General Statutes, as amended by Section 3, Chapter 10182, Acts of 1925, prescribes the fees to be paid for the registration of the different classes of motor vehicles required by law to be so registered.

Section 1031, Revised General Statutes, as amended by Section 12, Chapter 8410, Laws of Florida, Acts of 1925, provides: for the disposition of the license fund derived from the licensing of motor vehicles and the use to which same shall be applied.

Section 1020, Revised General Statutes, as amended by Section 6, Chapter 10182, Acts of 1925, provides:

"The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State, other than a foreign corporation doing business in this State; provided, that the owner thereof shall have complied with the provisions of the law of the foreign country, State, territory, or Federal District of his residence, relative to motor vehicles and the operation thereof, and shall conspicuously display his registration number as required thereby; and provided that the provisions of this section shall be operative as to a motor vehicle owned by a non-resident of this State only to the extent that under the laws of the foreign country, State, territory or Federal District of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this State. *But such*

*exemptions shall not apply to motor vehicles operated for hire."*

The provisions of Chapter 10182, Acts of 1925, became effective January 1st, 1926.

It will be seen that the provisions of the statute relative to the licensing of motor vehicles operated upon or along the highways in the State of Florida and the display of license tags thereon must apply to each and every motor vehicle so operated upon and along the highways into or within the State of Florida without regard to class or purpose save and except only as applied to the exceptions contained in Section 1020, Revised General Statutes, as amended by Section 6, Chapter 10182, Acts of 1925. It is also apparent that in and by the amendment of Section 1020, Revised General Statutes, to-wit, Section 6 of Chapter 10182 motor vehicles operated for hire from and after the 1st day of January, 1926 shall be excluded from such exemption contained in said Section 1020 is not a burden on interstate commerce and not in conflict with the commerce clause of the Federal Constitution.

In endeavoring to arrive at a correct solution of this question I have examined the decisions of the Supreme Court of the United States bearing on this question, which I wish to quote from as follows:

In the case of *Hendrick v. State of Maryland*, 235th U. S., Page 610, the Supreme Court of the United States, speaking through Mr. Justice Reynolds, said:

"The movement of motor vehicles over the highways is attended by constant and serious danger to the public and is also abnormally destructive to the ways themselves. Their success depends on good roads, the construction and maintenance of which are exceedingly expensive; and in recent years insistent demands have been made upon the States for better

facilities, especially by the ever increasing number of those who own such vehicles.\*\*\*In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horsepower of the engines—a practical measure of size, speed and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce.\*\*\*”

Quoting further from the same opinion the following language is used:

“\*\*\* In view of the many decisions of this Court, there can be no serious doubt that where a State at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for the determination by the State itself; and so long as they are reasonable and are fixed according to some uniform, fair and practical standard they constitute no burden on interstate commerce.”

The principle of law enunciated in the case of *Hendrick v. State of Maryland*, *supra*, was quoted with approval and sustained in the case of *Kane v. New Jersey*, 242nd U. S. Page 160. Note the following language from the opinion in the case of *Kane v. New Jersey*:

“The power of the State to regulate the use of motor vehicles on its highways has been recently considered by this Court and broadly sustained. It extends to non-residents as well as to residents. It includes the right to exact reasonable compensation for special facilities afforded as well as



reasonable provisions to insure safety. And it is properly exercised in imposing a license fee graduated according to the horsepower of the engine. *Kendrick vs. Maryland*, 235 U. S. 610."

Further quoting from the opinion in the case of *Kane v. New Jersey*, *supra*, the following language is used:

"\*\*\*The amount of fee is not so large as to be unreasonable; and it is clearly within the discretion of the State to determine whether the compensation for the use of its highways by automobiles shall be determined by way of a fee, payable annually or semi-annually, or by a toll based on mileage or otherwise.\*\*\*" (242 U. S. Page 168)

Further quoting from the *Kane* case, 242 U. S. Page 168:

"'In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation on its highways of all motor vehicles—those moving in interstate commerce as well as others.' \*\*\*"

In the case of *Michigan Public Utilities Co. v. Duke*, 266 U. S. 570, 69th Law Edition, Page 445, the same doctrine as held in the two cases above quoted was again quoted with approval and upheld by the Supreme Court of the United States. To quote from the case of *Michigan Public Utilities Co. v. Duke*, *supra*, 69th Law Edition Page 449:

"This court has held that in the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others; that a reasonable graduated license fee imposed by a State on motor vehicles used in interstate commerce does not constitute a direct burden on interstate commerce and that a State which, at its own expense, furnishes special facilities for the use of those engaged in intrastate



and interstate commerce, may exact compensation therefor and if the charges are reasonable and uniform they constitute no burden on interstate commerce."

The case of *Hendrick v. State of Maryland*, supra, was decided January 5th, 1915. The case of *Kane v. New Jersey*, supra, was decided December 4th, 1916. The case of *Michigan Public Utilities Co. v Duke*, supra, was decided January 12th, 1925. I give the dates on which these several cases were decided for the purpose of showing the continuity of the principle of law announced in the first case quoted, which has come on down and was the law of the land at a very recent date.

The underlying principle in these cases differentiates the question under consideration from that of a railroad company or other common carriers for hire not using the public highways of the State, and it is not hard to understand the reason for this difference. The railroad company owns its track and right of way and maintains same at no expense to the public, and in addition thereto furnishes a very substantial source of revenue to the State in the way of taxation. This is not so in the case of motor vehicles operated for hire. The State (or subdivisions thereof) furnishes the highways and maintains them at no expense to the non-resident operator of motor vehicles where he is not required to register and pay for the license on his vehicle.

The conclusion is inescapable that it is both legal and equitable to require of the operators of motor vehicles upon the highways of the State the registration thereof and the payment of the fee required by statute and that this applies to non-residents as well as resident owners or operators and without regard to the question of whether they are doing an interstate or intrastate business.

Therefore, it is my opinion that non-residents operating motor vehicles for hire into, upon and along the highways of this State, regardless of whether they be engaged in exclusive

interstate or intrastate, or both interstate and intrastate commerce are under the Statute required to register such motor vehicle in the State of Florida, whether the same be registered and licensed in another State or not; to pay the required fee therefor and procure a license tag as required by the Motor Vehicle License Law of the State of Florida; and that a failure upon the part of anyone to so comply with the Statute is a violation of the law and such party would be amenable to criminal prosecution.

Respectfully

J. B. JOHNSON,

Attorney General.

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#### INSPECTORS—TRAVELING EXPENSES

July 7, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of July 5th as follows:

“In compliance with Section 7 of Chapter 10182 a number of motor vehicle inspectors were employed. The State has been divided into districts by me to facilitate the work, according to the estimated number of motor vehicles in the given territory. As a result some of the larger counties have two inspectors.

“A few of the inspectors were appointed from within the district that they are required to serve on account of their place of residence. Therefore, districts have been assigned to inspectors outside of their home County when appointed.

“The question I want to know is as to the reimburse-

ments for necessary travelling expenses provided for by the Act when required to be away from the town or place of his domicile when on official business. What I want to know is where an inspector has been assigned to certain territory that is away from the place of his original abode or where he lived when appointed, if his headquarters in his district for the purpose of this Act is to be considered 'the town or place of his domicile' and in consequence he will not be entitled to reimbursement for board and lodging, while staying at the town or city of his headquarters.

"Thanking you for your official opinion in the premises, I am,"

Section 7 of Chapter 10182 provides that Inspectors shall be reimbursed for the necessary traveling expenses when required to be away from the town or place of domicile on official business, not to exceed \$150 per month. Where your Inspectors are appointed for districts, the law presumes they will establish headquarters or some place of residence in the district and they will not be entitled to be reimbursed for living expenses while at such headquarters, town or place of domicile.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## DEFUNCT BANKS—POSTAL MONEY DEPOSITED IN

July 7, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 5th inst., as follows:

“From time to time we have applications on part of Postmasters of the U. S. Government to make proof of claim on receivers of failed banks for deposit that may have been in such institution at the time of its closing subject to check as a preference.

“As I recall the U. S. Statutes, banking institutions taking deposits of this class subject to check are required to give depository bond and where this is not done it would seem they were merely common creditors under the general rule, but I would like to have your official opinion on the matter so I will be in a position to advise receivers as these matters arise.

“I am handing you one of the forms for your inspection which I will thank you to return with your reply, and very much oblige.”

Where Postmasters deposit postal money in banks as a general deposit they are not entitled to a preference over other claimants when such banks fail. Unless the postal money is deposited under special contract for safe-keeping and kept segregated from the funds of the bank, they are not entitled to preference. Where postal funds are deposited generally the bank becomes a debtor to the Postmaster the same as to other general depositors.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—DOMESTIC  
—FUNDS OF

July 21, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 19th inst., as follows:

"As there seems to be some conflict between Sections 20 and 26 of Chapter 10028, I am writing to ask for your construction of these Sections of the Law officially.

"Section 20 seems to me to provide for an outlet for funds of the Association where the membership does not utilize it all. In such cases the funds may be invested, as outlined in the Section, a part of it in real estate mortgages under certain conditions. To me it is clear that when such investments are made the Association has the right to dispose of such mortgages thereby creating a revolving fund to keep supplied in money.

"Under Section 26 it seems to me a situation such as where members of the Association have given mortgages on property to secure loans that in such cases such instruments are non-negotiable, keeping the privity between the parties just as they were at the start.

"As I see it, the mortgages given by members cannot be disposed of. Mortgages taken as an investment may be disposed of. One coming under Section 20 and the other coming under Section 26.

"Kindly give me your views on it, and oblige."

Your construction of Section 20 and 26 of Chapter 10028, Laws of Florida, Acts of 1925, as outlined above is



the correct construction. As I see it, there is no conflict between the two Sections.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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DEFUNCT BANKS—COUNTY DEPOSITS IN

July 23, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 22nd inst., as follows:

“Owing to the closing of several State banks that have been designated as county depositories, the question has arisen as to the status of those County funds in such banks over and above the amounts covered by securities, or surety bonds.

“To illustrate the point I am making, say for instance a County has \$50,000.00 of County funds secured by a bond or securities, or both, only \$25,000.00, the question is, whether or not the County, represented by the Board of County Commissioners is a common creditor along with other creditors, as to the amount over and above that which is secured. This is an important question just now because a number of the banks will be able to re-open if they get the co-operation of the depositors to freeze, or tie up a portion of their deposits for a specified time, which is necessary, of course, in each case.”

“Thanking you in advance for your opinion in the matter, I am,”

The law provides that County Commissioners shall take bond or other securities for the protection of county deposits. The County deposits are then protected to the amount of the bond or securities taken. The surety on the bond would then be liable to the County for the full amount covered by the bond provided the County had that amount in the bank or the County would be authorized to dispose of the securities and apply them on this deposit to the extent to which they would go. Where County deposits are not covered by bond or securities, the County would have to take as a general creditor. We have no statute in Florida giving a preference to State, Counties or Municipalities.

Very truly yours,

J. B. JOHNSON,

Attorney General.

#### AUTOMOBILE—SEARCHES AND SEIZURES

July 29, 1926.

*Hon. Ernest Amost,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 28th inst., with reference to law governing searches and seizures of automobiles, has been received.

Chapter 11385, passed by the Extraordinary Session of the Legislature, 1925, governs searches and seizures.

Very truly yours,

J. B. JOHNSON,

Attorney General.

PRISONER—SUBSISTENCE A CHARGE ON COUNTY  
WHERE CONVICTED

September 11, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 10th instant, with reference to bill of Hon. W. H. Dowling, Sheriff of Duval County, for the feeding of one Fortune Ferguson, who was convicted and sentenced to be electrocuted, received.

I note that Mr. Dowling has rendered this bill to the County Commissioners of Alachua County, and that they have refused to pay the same on the ground that the sentence of the court directed that said Ferguson be delivered to the State Penitentiary and there confined until electrocuted.

Under the electrocution statute the prisoner should be kept confined in the Sheriff's custody until after the death warrant is issued. The statute provides that upon the sentence of death being pronounced that the Clerk of the Circuit Court shall furnish to the Sheriff a certified copy of the record of conviction and sentence, and that it shall be the duty of the Sheriff to transmit this record to the Governor; that the Governor then in due course signs the death warrant and transmits the same to the Sheriff. After the death warrant has been issued, it then becomes the duty of the Sheriff to deliver the prisoner to the State Penitentiary. Until delivery of such prisoner to the State Penitentiary, the cost of his keeping is naturally upon the County and should be paid by the Board of County Commissioners of such County.

Because the sentence of the Court in this case provided that the said Fortune Ferguson be delivered by the Sheriff of Alachua County to the proper officer of the State Penitentiary of Florida, and by him safely kept until such date and time

as the Governor by his warrant may point out, which time the said warrant directed, within the walls of the permanent death chamber as provided by law, etc., would not change the force and effect of the law on the statute books.

If Fortune Ferguson was transferred from the County of Alachua to the Jail in Duval County for safe keeping, it would not affect the liability of Alachua County for his keep.

In my opinion this feed bill rendered by Mr. Dowling against the County of Alachua is proper and should be paid by Alachua County, and that the keeping of the said Fortune Ferguson is an obligation on Alachua County until the death warrant shall have been issued by the Governor.

Yours very truly,  
J. B. JOHNSON,  
Attorney General.

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#### BANKS—TAXES ARE PREFERRED CLAIMS

October 8, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

Your favor of October 8th, with attached letter from the United States Attorney for the Southern District of Florida, dated October 7th, has been received.

It is my opinion that all taxes due the United States, the State of Florida, the counties and cities, are preferred claims against insolvent banks. Taxes due the United States have a preference over all others.

Very truly yours,  
J. B. JOHNSON,  
Attorney General.

## BOARD OF HEALTH—EXPENDITURES

October 14, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 13th inst., as follows.

"I am transmitting herewith a voucher sent to this office for payment, amounting to \$20,000.00 with the statement that the money is to be deposited in the Citizens Bank of Jacksonville to be drawn upon from time to time by the State Board of Health, as an emergency fund.

I am not advised of any law, except that contained in Section 2018 of Revised General Statutes of Florida, which authorizes the State Board of Health to make requisitions on the State Treasurer for not exceeding \$2,500.00 per month for emergency and incidental purposes, and I am unable to find any law authorizing the issuance of a warrant that is not predicated upon itemized statements showing the purchases already made, or services already rendered, approved by the State Board of Health. I am, therefore, requesting your opinion as to whether or not the warrant for \$20,000.00 can be issued upon the voucher presented."

It is my opinion that expenditures by the State Board of Health are governed by Sections 2017 and 2018 of the Revised General Statutes. You would not be authorized to honor a requisition for \$20,000 at any one time. There is nothing in the law that would prevent or prohibit the spending of the amounts indicated by the Governor for general health purposes in the Counties designated if the expenditure of these funds were necessary for the health of those communities, which necessity is not disputed by anyone, but such expenditures must be in compliance with the statute and should



be paid under the provisions of Section 2017. The fact that a large amount is needed in this territory does not suspend the operation of the statute in the manner in which same should be spent.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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SUSPENDED BANKS—BONDS TO SECURE COUNTY  
DEPOSITS

November 13, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Mr. Amos:

I am in receipt of your favor of the 12th inst., as follows:

“The Maryland Casualty Company executed four bonds in the sum of Five Thousand Dollars (\$5,000.00) each for the Peoples Bank and Trust Company of St. Petersburg as a County school depository using the standard form according to copy transmitted herewith, with the term stated from the fifth day of January, 1926, until the first Monday in January, 1927. The said Peoples Bank and Trust Company of St. Petersburg was closed for some time and then re-opened and I am now confronted with the question as to whether or not the bonds executed by the Maryland Casualty Company as above stated continue to be liable for any loss that may have occurred prior to the closing of the bank and also for any loss that may occur from the time the bank was re-opened and the first Monday in January, 1927, and until the successor of the said Peoples Bank and Trust Company is designated and qualified and the Peoples Bank and Trust Com-

pany has fully accounted for all funds deposited therein belonging to the County or any Special Tax School District.

“Does the closing and re-opening of a bank affect the liability of the surety company in any way and if so to what extent?”

You have not advised me of the conditions under which this bank re-opened. If the bank re-opened without any reorganization and without writing off any of the deposits and the opening was a continuation of the former business of the bank, these bonds would, in my opinion, continue to secure the County deposits. If there were any reorganization or writing off of any percentage of the deposits or any other facts materially altering conditions, new bonds should be taken.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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## SPECIAL TAX SCHOOL DISTRICTS—INVESTMENT OF SINKING FUND

December 15, 1926.

*Hon. Ernest Amos,  
Comptroller,  
Tallahassee, Fla.*

Dear Mr. Amos:

I am in receipt of your favor of the 13th inst., as follows:

“It seems that the School Trustees of Pasco County have accumulated a sum of money in the banking funds to retire outstanding bonds maturing in 1929 and later, over a period of about twenty years. These Trustees want to know if it

will be legal for them to invest in stock of a building and loan association such as the West Pasco Building, Loan & Savings Association.

"I will be pleased to have your advice on this matter, though for myself I doubt its legality."

Section 594 of the Revised General Statutes provides in what securities the sinking fund of Special Tax School Districts can be invested. They can be invested in bonds of other Special Tax School Districts of the same County or in bonds of any district, municipality or County, of the same County.

The Trustees would not be authorized to invest such sinking fund in any other class of securities than those above mentioned.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### INSURANCE—TAXES ON PREMIUMS

July 27, 1925.

*Hon. John C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 24th instant, asking my opinion as to the construction of Chapter 10150, Acts of 1925, and especially—

"Whether companies, associations, firms, or individuals, organized and doing business under the laws of this State, are relieved entirely from the payment of taxes upon pre-

miums collected from policy-holders in Florida in 1925, or whether they will be liable for the tax on such premiums received up to October 1st, 1925, the date the amendatory Act takes effect."

It is my opinion that the statute requiring the organizations referred to in your letter to pay 2 per cent. of gross receipts to the State Treasurer remains in full force until the first day of October, 1925, and that, therefore, the organizations, etc., will be required to make report of their receipts and to pay the privilege tax on such receipts up to October 1, 1925.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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#### INSURANCE—RECIPROCAL

October 23, 1925.

*Hon. John C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 20th instant, in which you request my opinion based upon Sections 4298 and 4299, Revised General Statutes of Florida, together with Chapter 10150, Laws of Florida, Acts of 1925, and Chapter 10153, Laws of Florida, Acts of 1925, as to whether or not either of the Acts of 1925 mentioned refer to or apply to reciprocal or inter-insurance exchanges operating in Florida, or to their agents, and if so to what extent.

I have carefully considered these statutes and in conference with Judge Gaines have come to the conclusion that

Chapters 10150 and 10153, Laws of Florida, Acts of 1925, do not apply to reciprocal or inter-insurance exchanges operating in Florida, or to their agents.

Upon first impression it might appear that Chapter 10153 would apply in such cases, but when we consider this in its entirety, and in its relation to other legislative acts touching upon these subjects, we are brought to the conclusion that it was not the legislative intent that the same should apply in such cases, and that such would be the logical holding of our courts should the matter be brought before them for adjudication.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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#### INSURANCE—TITLE COMPANIES

January 11, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 8th instant, reading as follows:

--- "This Department is preparing for issuance of Licenses and Certificates of Authority to Title Insurance Companies, under the Insurance Laws of Florida.

"Will you kindly advise whether such Title Insurance Companies, as are organized under the Laws of the State of Florida, should be required to pay a premium tax of two per cent on all or any collections from policy-holders in this State during the year 1925, under the provisions of Chapter 10150, Acts of 1925, amending Section 911, Revised General Statutes of Florida."



By the provisions of Chapter 10150, it provides:

"Provided, however, that no tax imposed in this Section shall apply to mutual insurance companies organized and doing business in this State. Nor shall any company or association, firm or individual organized and doing business under the laws of this State be required to pay any tax upon the receipts of premiums from policy holders in Florida."

Under the provision, Title Insurance Companies organized under the laws of the State of Florida would not be required to pay this premium tax.

Yours very truly,

J. B. JOHNSON,

Attorney General.

## INSURANCE—FOREIGN CORPORATIONS

January 14, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

You have submitted to me the matter of the application of the Century Insurance Company, Ltd., under the laws of Scotland, to do an insurance business in the State of Florida, with the request that I advise you as to whether or not this company is a corporation and will be required to qualify to do business in the State of Florida under the Foreign Corporation Law.

I have considered the letter of the Corporaton Service Company of Florida by Mr. C. L. Waller, Vice President. I

agree with Mr. Waller in his differentiation between a joint stock company and a corporation, but after an examination of the Articles of Association of the Century Insurance Company, Ltd., I am forced to come to the conclusion that it is a corporation foreign to the State of Florida and that before it would be authorized to do business in this State it should qualify with the Secretary of State under the Foreign Corporation Law.

Its Charter or Articles of Association recites:

“CERTIFICATE OF INCORPORATION  
of  
THE SICKNESS AND ACCIDENT ASSURANCE ASSOCI-  
ATION LIMITED.

“I HEREBY CERTIFY, That ‘The Sickness and Accident Assurance Association Limited’ is this day incorporated under the Companies Acts, 1862 to 1882, and that this Company is Limited.

“GIVEN under my hand at Edinburgh, this Seventeenth day of April, Eighteen Hundred and Eighty-five.

JOHN J. REID,

Q. & L. T. R.,

and Registrar of Joint-Stock  
Companies.”

You will note that this certificate is headed:

“CERTIFICATE OF INCORPORATION”

In the body of the certificate we find these words:

“\* \* \* is this day incorporated under the Companies Acts, 1862 to 1883, \* \*”. It is true this certificate above quoted gave the name of the company as “The Sickness and Accident Insurance Association Limited.” In 1897 as per

second certificate this company changed its name. In April, 1901, it again changed its name to the Century Insurance Company, Ltd.

We are not conversant with the laws of Scotland, under which this company is organized. We are compelled to hold that this company is a corporation and not a joint stock company as it is generally accepted and defined under our laws. For the reasons stated, I would advise you to withhold permit to do an insurance business until this company has qualified under the Foreign Corporation Law.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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INSURANCE—REINCORPORATION OF OLD COMPANY  
—PAYMENT OF FEES

March 23, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Mr. Luning:

I am in receipt of your favor of the 22nd, as follows:

“Under date of the 18th inst., I am advised as follows by the Detroit Fire & Marine Insurance Company:

‘As the charter of this company expired in January last, the stockholders at the annual meeting held in Detroit on January 19, 1926, renewed said charter in perpetuity and adopted Articles of Association and By-laws, copy of which is herewith submitted for your files.’

“Prior to taking out this new charter, the Detroit Fire & Marine Insurance Company paid through this office the

State License Tax of \$200.00 for the year ending October 1st, 1926.

"In view of the fact that the old charter is expired and the company is now operating under a new charter, will you kindly advise if they may be permitted to transact business in this State, until October 1st, 1926, under the State License Tax heretofore paid, or whether it is the duty of the State Treasurer to collect an additional State License Tax, from said company for the current license year.

"Please advise also the duty of the State Treasurer with reference to collecting additional license tax from this company on account of its agents who were licensed while its old charter was in force."

As the Detroit Fire & Marine Insurance Company has incorporated as a new company, they will have to come in and qualify, get a permit and pay license taxes without reference to the permit and license issued to the old company. There are no provisions in the law that will relieve them from paying the license tax and securing permit to do business in Florida.

Very truly yours,

J. B. JOHNSON, . . .  
Attorney General.

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INSURANCE—RENEWAL OF CERTIFICATE OF  
AUTHORITY TO TRANSACT BUSINESS

April 3, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 2nd inst., with reference to license or

certificate of authority for this company to do business in Florida, has been received.

When writing you before with reference to this matter I was led to believe that this company's corporate charter had expired and the new company had been organized. From the letter of this company dated March 30th, addressed to you and copy of Articles of Association submitted, I find that the charter of the Detroit Fire & Marine Insurance Company had not expired and that the association is continuing to do business.

Under these circumstances it will be proper for you to renew this certificate of authority as provided under the law, it being the same corporation or association to which former permit was issued.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### FRATERNAL SOCIETIES—INCORPORATION

April 7, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of April 6th, as follows:

"I hand you herewith proposed charter of Order of Arabian Knights, together with a surety bond in the sum of \$5,000.00, both of which documents have been deposited with this Department under the provisions of Section 12, Chapter 6970, Acts of 1915 (4429 Revised General Statutes of Florida.)



"I am in doubt as to whether this society should procure its charter from the Circuit Judge of the circuit in which its principal office is located, as in case of other corporations not for profit, or whether approved of the proposed charter or articles of incorporation by the State Treasurer takes the place under the law of procuring the charter from the Circuit Judge.

"I will appreciate your advising me with regard to this matter, advising also whether the accompanying bond is in proper form, or whether the society in its corporate capacity should be the principal in the bond, instead of the several incorporators.

"I will appreciate your returning the enclosures with your reply."

It is my opinion that fraternal organizations qualifying under the provisions of Chapter 6970, Acts of 1915, do not have to secure charter either from the Secretary of State or from a Circuit Judge.

The incorporation and operation of fraternal benefit societies, in my opinion, are fully provided for in the chapter above cited and carried as Sections 4437 to 4480, inclusive, of the Revised General Statutes. When a fraternal benefit society shall have filed with you the documents and papers as prescribed in Section 4429 and shall have otherwise complied with the provisions of said chapter, you will be authorized to give them a permit.

Very truly yours,  
J. B. JOHNSON,  
Attorney General.

CORPORATIONS—FOREIGN—DEPOSIT TO COVER  
COSTS OF PENDING SUIT

June 14, 1926,

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of June 14th, which reads as follows:

"Section 4331, Revised General Statutes of Florida reads as follows:

"4331. (2784.) Foreign company to designate agent on whom process can be served. No surety company not incorporated under the authority of this State shall, directly or indirectly, take risks or transact business in this State, until it shall have first filed an agreement under the seal of the company in the office of the State Treasurer, signed by the secretary and treasurer thereof agreeing on the part of the company, that service of process in any civil action against the company may be made upon any agent of such company in this State, and authorizing such agent for and in behalf of such company to admit such service of process on him and agreeing that the service of process upon any agent shall be valid and binding upon the company, as if made upon the president or secretary thereof, and agreeing also to deposit with the State Treasurer in case of the contest with the holder of any surety or fidelity bond over any claim for loss or damage growing out of a contract of insurance or guarantee of fidelity, an amount in current funds or marketable securities sufficient to cover such claim in full to be held until and subject to the termination of the controversy; and the Treasurer of the State is here-

by required to make a demand upon the company for such deposit when notified by a policy holder of the institution of any suit for loss or damage growing out of any such contract as aforesaid, and the agreement shall continue in force so long as any liability remains outstanding against the company in this State."

"Section 4339 R. G. S. requires that a surety company, in order to be licensed in this State, must deposit \$50,000.00 in United States or State bonds with this office.

"The Fidelity and Deposit Company of Maryland has on deposit with this office \$50,000.00 as required by Section 4339 R. G. S. I have been notified that a certain suit has been instituted against this company in Sarasota County, upon a surety bond, the amount sued for being the face of the bond, which is \$123,600.00.

"Will you please advise if it is my duty under the law to make demand upon the Fidelity and Deposit Company of Maryland for a deposit of \$123,600.00, or any other amount in excess of the \$50,000.00 deposit which said company already has under Section 4339 R. G. S.

"I would appreciate your advising me officially with regard to my duties in this matter and others of like nature."

It is my opinion that you are required under the provisions of Section 4331, Revised General Statutes, quoted above, to demand of the Fidelity & Deposit Company of Maryland securities sufficient to cover the amount of claim in the suit in question. There can be no doubt of this under the provisions of the statute quoted.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## LIFE INSURANCE COMPANIES—DISCRIMINATION

August 16, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Sir:

We are in receipt of your favor of the 14th inst., as follows:

“Will you kindly advise this department whether or not the second paragraph of Section 4268, Revised General Statutes of Florida, is limited to life insurance companies, or applies to other insurance companies and associations as well.

“Section 4268 bears the caption, ‘Life insurance companies not to discriminate between insureds of the same class; giving and accepting rebates.’ However, no reference is made specifically to life insurance companies in the titles of either Chapter 6849, Acts of 1915, nor Chapter 7870, Acts of 1919, amending said Chapter 6849, and which has been incorporated in the Revised General Statutes of 1920.

“The first and third paragraphs of said Section 4268, Revised General Statutes, are clearly applicable to life insurance companies only, but I am in doubt as to the application of the second paragraph, and will appreciate your advising me as to its proper construction.”

Section 4268 of the Revised General Statutes is Section 1 of Chapter 6849, Acts of 1915, as amended by Chapter 7870, Acts of 1919. The title to Chapter 6849, Acts of 1915, reads:

“AN ACT Concerning Insurance Companies, Associations and Their Agents and Other Persons, Firms and Corporations, Prohibiting Discrimination and Rebating, Misrepresentation and Twisting.”

Paragraph 1 of this section applies definitely to life insurance companies and agents. Paragraph 2 of this section applies to all insurance companies.

The title as given to Section 4268 would not have the effect of confining the provisions of this section to life insurance companies. You are correct in the assumption that paragraphs 1 and 3 of Section 4268 apply to life insurance companies only, but paragraph 2 applies to all.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### INSURANCE COMPANIES—SERVICE OF PROCESS

October 7, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Mr. Luning:

I am receipt of your favor of the 7th inst., as follows:

"I invite your attention to the case of Spector vs. Northwestern Fire and Marine Insurance Company, decided by the Supreme Court of Pennsylvania, February 1st, 1926.

"I will thank you to advise me whether you believe Sections 4248, 4292, 4304, 4331 and 4450 of the Revised General Statutes of Florida, to be consistent with the Constitution of Florida.

"I am adding for your information that service of process upon the State Treasurer under the various sections referred to, is made by the Sheriff of Leon County, Florida, in which the State Capitol is located, regardless of the County in which the action originates. I would also appreciate your



advising me if this service is valid and binding under the Constitution and laws of Florida.

“Thanking you in anticipation of your advice in the matter.”

The decision of the Supreme Court of Pennsylvania in the case of *Spector v. Northwestern Fire & Marine Insurance Co.*, decided February 1st, 1926, in my opinion does not affect the Florida statutes mentioned by you. The point or question on which that case was reversed by the Supreme Court of Pennsylvania would not be involved in the statutes of this State. Pennsylvania has a statute governing the service of process on insurance companies which was passed in 1901. In 1921 the Pennsylvania Legislature undertook to revise and amend the insurance laws and in such amendment and revision they undertook to incorporate a provision for the service of process on insurance companies. This Act passed in 1921 did not repeal the Act of 1901 and there was a further objection that the provision with reference to service of process, etc., was not mentioned in the title.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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INSURANCE—75 PER CENT. CO-INSURANCE CLAUSE

November 8, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Mr. Luning:

Your favor of November 5th, calling attention to riders being placed on insurance policies in this State, which riders read as follows:

**"SEVENTY-FIVE PER CENT CO-INSURANCE  
CLAUSE"**

"It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that if the subject of insurance covered by this policy be personal property, the assured shall at all times maintain insurance on such property of not less than seventy-five per cent (75%) of the actual cash value thereof; and if the subject of insurance covered by this policy be buildings or structures, the assured shall at all times maintain insurance on such buildings and on structures of not less than seventy-five per cent (75%) of the insurable value as stated in this policy applicable to each separate building or structure.

"In the event of failure of the assured to maintain, either as to personalty or realty, insurance as stipulated above, the assured shall be a co-insurer to the extent of such deficit, and in that event shall bear his, her or their proportion of any loss.

"In the event that an aggregate claim for any loss is less than Ten Thousand Dollars (\$10,000) (provided, however, such amount does not exceed five per cent (5%) of the total amount of insurance upon the property described herein and in force at the time of such loss occurs) no special inventory or appraisal of the undamaged property shall be required. If this policy be divided into two or more items, the foregoing conditions shall apply to each item separately.

"Attached to and forming part of Policy No. \_\_\_\_\_  
of the \_\_\_\_\_ Insurance Company, of

\_\_\_\_\_  
\_\_\_\_\_ Agent.

"NOTE—AGENTS WILL SIGN AND PASTE ONE ON POLICY, ONE ON DAILY REPORT, AND ONE ON REGISTER."

I am clearly of the opinion that Sections 4281 and 4282 of the Revised General Statutes control as to the amount recoverable for property lost by fire or lightning on any buildings or structures. My construction of this rider above quoted is that it is an undertaking to evade and avoid the provisions of the two statutes above referred to. I feel sure the Courts would so hold. It is my opinion that under the law and the terms of policies used, the insurance companies would have the right to rebuild or restore the property if they desired to exercise this option.

Of course, this question will not be definitely settled until passed upon by some court of competent jurisdiction.

Very truly yours, .

J. B. JOHNSON,  
Attorney General.

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#### INSURANCE ON AUTOMOBILES

November 9, 1926.

*Hon. J. C. Luning,  
State Treasurer,  
Tallahassee, Fla.*

Dear Mr. Luning:

I am in receipt of your favor of the 8th inst.

You state:

"My attention has been called to a transaction in which an Automobile Sales Company with offices located in this

State, sold a car upon the installment plan, including in the contract price the sum of \$72.00 to cover interest on deferred payments and insurance."

Each of Sections 4267, 4276, Revised General Statutes and Chapter 10053, Acts of 1925, deal with insurance companies authorized to do business in this State. You have no way of reaching a foreign insurance company not authorized to do business.

It is very doubtful if the automobile salesman could be classified as an insurance agent soliciting business. This sales company very likely has no option in the placing of insurance on these cars. It is more than likely that the cars are owned by someone else or some automobile company.

Very truly yours,

J. B. JOHNSON,

Attorney General.

RURAL SCHOOL INSPECTORS—TRAVELING  
EXPENSES

December 28, 1925.

*Hon. W. S. Cawthon,  
State Superintendent of Public Instruction,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 24th inst., reading as follows:

“Kindly give this office your written opinion as to whether Chapter 11369 No. 34, Acts of the Special Session of the Legislature of November, 1925, authorizes an appropriation for defraying the traveling expenses of Rural School Inspectors for which provision is made in Section 540, Revised General Statutes of the State of Florida.”

I acknowledge receipt of copy of the act governing this question. You will note that it provides:

“\*\*\*The Governor of the State of Florida is hereby authorized to employ clerical aid to work in any department of the State under the supervision and direction of the head of such department whenever in the judgment of the Governor such additional help is necessary for the proper conduct of the business and affairs of such department, and when the same has become necessary by reason of the increase in the business of such department and was not foreseen and adequately provided for in the General Appropriation Bill.\*\*\*”

The Act further provides:

“\*\*\*And the Governor is further authorized to employ such persons as may be required from time to time to make investigations as may, in the judgment of the Governor, be necessary or ex-



pedient to efficiently conduct the affairs of the State Government, especially to make investigation and report of matters concerning taxation and finance throughout the State of Florida.\*\*\*"

I am quite sure it was not the intention of the Legislature, by this Act, to increase the amount of any existing appropriation. As I see it, this Act was passed for the purpose of securing additional help by reason of the increased volume of business handled by the State.

I do not think the Governor would be authorized, nor do I think it was the intention of the Legislature to authorize, the increase of any existing appropriation.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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FREE TEXT BOOK LAW—CONTRACT WITH  
PUBLISHERS

February 1, 1926.

*Hon. W. S. Cawthon,  
State Superintendent of Public Instruction,  
Tallahassee, Fla.*

My dear Mr. Cawthon:

I am in receipt of your favor of February 1st, with copy of letter addressed by you to the several publishing companies under contract to furnish school text books and copy of letter addressed to you by Messrs. Myers & Myers, representing the publishers, which are as follows:

"At a recent meeting of the Florida State School Book Commission certain questions having been raised relative to the proposed operation of Chapter 10254 (No. 232) Acts of 1925, the same being an Act to provide for furnishing free

text books to pupils of certain grades in the public free schools of Florida, the Secretary was requested to address a communication to each of the sixteen publishers having contracts with the State School Commission for furnishing books for the first six grades of school, to the end that an agreement might be made on the basis for the execution of the Free Text Book Law.

"Pursuant to the instructions of the Commission, the following letter was addressed to each of the publishers concerned:

" 'January 7, 1926.

" "\_\_\_\_Company,  
\_\_\_\_\_.

" 'Gentlemen:

" "The Florida Legislature passed a law last spring providing for free text books to the school children of the first six grades.

" "This Statute makes provision for:

" "1. The orders for books made by the State Superintendent to the publisher.

" "2. The filling of such orders by the publishers and the shipment of the books by them to the various County Superintendents.

" "3. The approval and payment by the State Text Book Commission of bills rendered by the publishers for books shipped to the various Counties.

" "If it is your intention to co-operate with the State and County educational authorities in the execution of the Statute, please indicate such intention and inform this office whether or not you will make shipments to the County Superintendents billing the same at wholesale prices and prepaying the freight charges. The freight bills could be handled more

easily by the School Book Commission if attached to the invoices of books shipped.

“ ‘Please list the books published by you and used by this State under contract together with the prices at which you propose to sell the same to the State F. O. B. the factory.

“ ‘Suggestions relative to the operation of this law would be appreciated.

“ ‘Yours truly,

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State Superintendent.’ ”

“The following is the reply of the publishers made through their attorneys:

“ ‘February 1st, 1926.

“ ‘Hon. W. S. Cawthon,  
State Superintendent  
of Public Instruction,  
Tallahassee, Florida.

“ ‘Dear Sir:

“ ‘The representatives of several publishing companies in response to the inquiries contained in your identic letters to them of January 7, 1926, inviting suggestions, evidencing their desire to co-operate with you to the fullest possible extent, have appeared in Tallahassee for a conference with reference to the problems created by the passage of the Free Text Book Law by the Legislature of 1925, and have retained us as their spokesman in such conference.

“ ‘From your inquiry in the last paragraphs of your letter with reference to shipments and prices, it is apparent to our clients that the discussion in such a conference will inevitably turn to a discussion of contracts abrogating or supplementing their present existing contracts entered into under the provisions of Chapter 8500, Laws of Florida, 1921, and the adoption subsequently held thereunder. Before entering into

such a discussion, they would like to be advised upon, and respectfully request that you submit to the Attorney General in writing for his opinion, the following questions of law:

“(1) Has the State School Book Commission the legal power, under Chapter 8500, Laws of Florida, 1921, to alter, abrogate, or amend the present existing contracts entered into under the provisions of that Statute, or has its power with reference to such contracts been exhausted?

“(2) Has the State School Book Commission the legal power, under the provisions of Chapter 10254, Laws of Florida, 1925, to enter into a contract altering, amending or abrogating the present existing contracts entered into under the provisions of Chapter 8500, Laws of Florida, 1921?

“(3) Has the State School Book Commission the legal power, under both laws construed together, to enter into any contract for furnishing text books to the State, until the present existing contracts have expired by their own limitations?

“(4) Would the State School Book Commission, under the provisions of Chapter 10254, Laws of Florida, 1925, have the legal right to enter into contracts at the present time, assuming the abrogation of present existing contracts, without letting the contracts on a competitive bid basis?

“(5) Has Chapter 10254, Laws of Florida, 1925, any inherent constitutional defects, which might, upon appropriate legal action, vitiate any contract entered into at this time under the terms thereof?

“(6) Will the three-fourths of a mill levy provided for, produce sufficient revenue to pay for the books which would have to be provided by the State, and if not, could other funds be legally transferred to the Text Book Fund, so as to insure to the publishers prompt and full payment for the books furnished by them?

“These questions are proposed, assuming our clients’ willingness to discuss the question of supplemental contracts; but their willingness for such a discussion is contingent upon an opinion from the Attorney General which would indicate that the questions raised would in no way injuriously affect their interests.

Yours very truly,

MYERS & MYERS,

By\_\_\_\_\_’

“Please give this office an answer to the letter of the publishers and in the light of such answer, advise us to whether or not it is your opinion that the Williams Free Text Book Law is operative.”

I note in the letter from Messrs. Myers & Myers they have asked for my opinion on six (6) questions of law enumerated therein.

Answering the first question: The State School Book Commission has no legal power or authority under Chapter 8500, Laws of Florida, Acts of 1921, or under any other law to alter, abrogate or amend the existing contracts between the School Book Commission of the State of Florida, and the publishers of school books, already entered into and now being operated under.

Answering the second question: The State School Book Commission has no power or authority under the provisions of Chapter 10254, Laws of Florida, Acts of 1925, to abrogate, alter or amend the existing contracts. If the State School Book Commission and the publishers who have contracted to furnish uniform text books to the State under the provisions of Chapter 8500 could mutually agree and come to an understanding then it would be possible for the State School Book Commission and the publishers of these books to enter into a supplementary contract, providing for the sale and delivery of books as provided for in Chapter 10254. Un-



less the publishers would voluntarily agree to enter into such supplementary contract, there is no power or authority as we see it, that can force them to do so.

Answering the third question: In our opinion, the State School Book Commission and the publishers of school books could, if they desired, enter into a supplementary contract for the furnishing of the free text books to be paid for by the State as provided for in Chapter 10254.

Answering the fourth question: If such supplementary contract should be entered into by and between the State School Book Commission and the publishers of such books, then such contract, in our opinion, would be legal. It must be distinctly understood though that the original contract would not be abrogated or avoided by any such supplementary contract. It would only be amended to change the method of delivery and distribution under Chapter 8500 to the method of delivery and distribution provided for in Chapter 10254.

Answering the fifth question: It is not the province of this office or of the Attorney General to pass upon the constitutionality of a Statute. As to whether or not any Statute is constitutional is a judicial question pure and simple. If an Act of the Legislature should be declared unconstitutional by a competent Court and subsequently a similar Act should be passed by the Legislature and it became appropriate or proper for the Attorney General to render an opinion thereon, then he might be authorized to give it as his opinion that the subsequent Act was unconstitutional, such opinion being based upon the decision of a competent Court.

Answering the sixth question: The revenue produced from the  $\frac{3}{4}$  mill levy under Chapter 10254 will not be sufficient to furnish to the school children of the State of Florida free text books up to and including the sixth grade. We are advised that the  $\frac{3}{4}$  mill will raise approximately

\$450,000.00. It is estimated that the school text books required to be furnished under Chapter 10254 will cost \$800,000 or \$900,000.

It is true that Chapter 10254 provides that any books now owned and used by the children that could be carried over to the school term of 1926-1927 be ascertained and deducted from the free text books to be purchased. There is no one at the present time who can say what percentage of books now owned and used by the school children will be available for 1926-1927. It is very possible that since the percentage would be small, as it would be the inclination of children and parents operating under the Free Text Book Law to have new books and not to undertake to use old or damaged books, this is a question that cannot be answered by the State Text Book Commission before about next June.

Chapter 10254 provides in express terms the method and manner of the purchase and distribution of these books. The State School Book Commission will not have any authority under the law to adopt any other plan or method.

Under Chapter 8500, the school book publishers under contract with the State are required to establish a State depository. We are advised that they have now a contract with such a State depository, which might necessarily enter into the conditions surrounding the placing in operation of the Free Text Book system. It might not be practicable to undertake to operate the Free Text Book system for any of the following reasons:

First: If the contracting publishers should refuse to enter into supplementary contract for the furnishing and distribution of such text books.

Second: Unless contract between the publishers and the State depository be also supplemented and amended.

Third: If it clearly appears that the amount raised by the  $\frac{3}{4}$  mill levy is inadequate to pay for the free text books

then it would be impossible to operate under the law because the State could not afford to furnish to some children free books and fail to furnish to others the free books to which they are entitled, under the law. We know of no way under the law whereby the funds available could be supplemented or added to.

Very truly yours,

J. B. JOHNSON.

Attorney General.

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SPECIAL TAX SCHOOL DISTRICTS—ISSUANCE  
OF BONDS

March 12, 1926.

*Hon. W. S. Cawthon,  
State Supt., Public Instruction,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of March 11th, as follows:

“Kindly advise this office whether or not the Amendment of Section 17 of Article XII, of the Constitution of the State of Florida as ratified by the General Election of 1924 supersedes Section 593, Revised General Statutes of the State of Florida to the extent of removing the limit of millage of a tax levy in a Special Tax School District, said levy being for the purpose of liquidating bonded indebtedness.”

I also acknowledge receipt of decision of the Supreme Court of Florida on the question involved.

Special Tax School Districts, under Section 17 of Article XII of the Constitution of Florida, as amended at the General Election of 1924, have the right to issue bonds to an amount where the entire indebtedness of the District shall not exceed twenty (20%) per cent of the assessed value in the District.

This amendment to the Constitution supersedes Section 593, Revised General Statutes of Florida, which provides for a levy of five (5) mills. The amendment to the Constitution of Section 17 of Article XII governs at the present time.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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SCHOOLS—SEPARATION OF WHITE AND NEGRO  
PUPILS

June 4, 1926.

*Hon. W. S. Cawthon,  
State Supt., Public Instruction,  
Tallahassee, Fla.*

Dear Sir:

I am just in receipt of your letter of June 3rd as follows:

“Kindly advise this office whether or not, in your opinion, Section 5870, Revised General Statutes, is applicable to private schools.”

In my opinion Section 5870 of the Revised General Statutes of Florida was intended to and does apply to all the schools, whether public or private. The purpose of this Statute, in my opinion, was to insure the separation of the white and negro races in the schools of this State.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## INHABITANTS—CONSTRUCTION

February 2, 1925.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of January 29th in which you ask that I advise you my construction of the language contained in Chapter 9183, Acts of 1923, to-wit: "All the inhabitants of the several Counties in this State."

It is my opinion that the above quoted language includes "all persons who dwell or reside permanently in a place; or persons who have a fixed and permanent abode in a place regardless of their nationality or citizenship." Resident and inhabitant mean the same thing, but there is a difference between "citizen" and "inhabitant". The leading case sustaining this construction is *Crawford vs. Wilson*, (N. Y.) 4th Barb. 504-520, which is also followed in *Gormully & Jeffry Manufacturing Company vs. Pope Manufacturing Company* (U. S.) 34 Fed. 818-819.

A mere sojourner in any locality is not an inhabitant, but one becomes an inhabitant immediately upon reaching the mental conclusion that he will continue to reside in that particular locality.

Yours very truly,

RIVERS BUFORD,

Attorney General.



## PROPERTY ESCHEATING TO STATE

April 30, 1925.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

I have your request that I advise you in regard to the contents of a letter from Messrs. Sparkman & Knight, under date of April 24th.

I know nothing about the case referred to in your letter except the facts contained therein. It is my opinion that the construction placed by C. L. Sparkman on the Statutes of this State with reference to the title to property which is escheated to the State is correct, and that the State is not authorized to take the property, but is only authorized to cause the property to be sold under the provisions of the Statutes and to convert the money as is therein provided.

Yours very truly,

RIVERS BUFORD,

Attorney General

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SUBSTANTIVE OFFENSE—PUNISHMENT

May 13, 1925.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of this date I beg to say Section 6250, Revised General Statutes of Florida, defines a substantive offense and the punishment therein provided may

only be imposed by a Court of competent jurisdiction after due process of law.

Yours very truly,  
RIVERS BUFORD,  
Attorney General.

### FERTILIZER—SIZE OF PACKAGES

December 9, 1925.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 9th instant requesting my opinion as to whether or not you have the right to standardize the packages, as to weights, of commercial fertilizers, received.

In your letter you recite:

“Section 2410 of the Revised General Statutes of Florida, provide that:

“The Commissioner of Agriculture shall have authority to establish such rules and regulations in regard to the inspection, analysis and sale of fertilizers, chemicals and cotton seed meal not inconsistent with provisions of this Chapter, as in his judgment, will best carry out the requirements thereof.”

“Chapter 9127 of the Laws of 1923 contains the clause:

“Commercial fertilizers or fertilizer materials in packages shall only be sold in packages containing fifty (50) pounds, or in multiples thereof.”

“The Act above referred to amended Section 2398 of the Revised General Statutes, and Chapter 10128 of the Laws of 1925, amended Sections 2398, 2401, 2405 and 2406 of

the Revised General Statutes, but left Section 2410 of the Revised General Statutes intact."

I note by Chapter 9127, Acts of 1923, the law undertook to prescribe or regulate the size or weight of packages allowed to be sold, providing they should be sold in packages containing 50 pounds or multiples thereof.

I note by Chapter 10128, Laws of Florida, Acts of 1925, the law was again amended and left out that provision regulating the weight of packages. It is reasonable to suppose this provision was left out intentionally. That being true, it was possibly the intent of the Legislature that fertilizer should be sold in any size package desired. It would have been an easy matter for the Legislature to have prescribed the size of the package or have expressly authorized the Commissioner of Agriculture to prescribe the size of packages.

For the above reasons I am of the opinion that it was not the intention of the Act to allow the Commissioner of Agriculture, in his Rules and Regulations, to prescribe a standard package.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

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INSPECTION TAX ON GASOLINE, KEROSENE AND  
SIGNAL OIL

December 28, 1925.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 23rd instant, reading as follows:

"Under the provisions of Section 9, Chapter 10134, Laws of Florida, Acts of 1925, the Commissioner of Agriculture is required to collect an inspection tax of one-eighth cent ( $\frac{1}{8}c$ ) per gallon on all gasoline, kerosene and signal oil sold within this State, and a further provision of the same Section provides that, 'all remittances to the Commissioner of Agriculture to cover the inspection tax herein provided shall be accompanied by a detailed report under oath, showing the number of gallons of gasoline, kerosene and signal oil sold and delivered in each county.'

"An oil company in New Orleans, La., contends that they are not required to make report to this office covering their sales to oil companies, dealers or consumers, nor to pay the inspection tax provided under the Law, on the ground that their sales are all made in the State of Louisiana and delivered to the purchaser in New Orleans, f. o. b. carrier, in which case the carrier is agent of the purchaser to receive delivery of such shipments.

"We would be pleased to have your opinion as to whether or not this Department is required to collect the inspection tax on gasoline, kerosene and signal oil sold by foreign corporations to companies or individuals residing in the State of Florida, or whether such sales and deliveries are made at the point of origin, the carrier in such case being the agent of the purchaser to receive delivery."

If this New Orleans Oil Company sells oil to persons in Florida, delivered f. o. b. carrier at New Orleans, you cannot force them to make the reports required by Chapter 10134, Acts of 1925.

After this oil so shipped reaches the State you can prevent its sale unless inspection tax is paid, and in my opinion, it is your duty to see that this tax is paid before the oil is offered for sale in the State.

For this purpose it will be necessary for you to keep posted and when this oil reaches the State to take charge of it and prevent its sale unless the tax is paid.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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TRUST DEEDS

December 28, 1925.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

Section 3793 of the Revised General Statutes of Florida provides:

“Every deed or conveyance of real estate heretofore or hereafter made or executed, in which the words ‘trustee’ or ‘as trustee’ are added to the name of the grantee, and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall grant, and is hereby declared to have granted a fee simple estate with full power and authority in and to the grantee in such deed to sell, convey and grant both the legal and beneficial interest in the real estate conveyed, unless a contrary intention shall appear in the deed or conveyance: Provided, that there shall and did not appear of record at the time of the recording of such deed or conveyance, a declaration of trust by the grantee so described, declaring the purposes of such trust, if any, or that the real estate is held other than for the benefit of the grantee.”



In the making of deeds by the Trustees of the Internal Improvement Fund to a grantee as trustee this should be considered a deed directly to the grantee, conveying title to him in person as set out in the above quoted Statute unless the grantee furnishes to the trustees of the Internal Improvement Fund some instrument of writing setting forth the terms and conditions of the trust. Where a deed is made to a party as trustee and no terms and conditions of a trust are named, the deed is construed as conveying title to this party in fee simple and in taking mortgages as security it will be necessary for the Trustee to have his wife put her signature to same and relinquish dower, if he is a married man.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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MISBRANDED ARTICLES—SALE OF

July 20, 1926.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Mr. Mayo:

We are in receipt of your favor of the 20th inst., as follows:

"Please note the attached copy of analysis No. 4152 by the State Chemist, made from an official sample labeled, 'Florida Orange' artificial color and flavor, manufactured by J. H. Graham Bottling Works, Tampa, Florida. A specimen of the label (cap) is attached hereto for your inspection.

"It would seem that this article is misbranded within the meaning of Section 2039 of the Revised General Statutes, in that it is being offered for sale under a distinctive name of another article.

"We are informed by the State Chemist that, 'We find no Florida or other orange in its composition.'

"We would, therefore, be pleased to have your opinion as to whether or not the said article is or is not misbranded within the meaning of Section 2039 of the Revised General Statutes."

Section 2035 of the Revised General Statutes reads as follows:

"That it shall be unlawful for any person to manufacture, sell, or keep or offer for sale, or distribute, within the State of Florida, any article of food, drugs, medicine or liquors which is adulterated or misbranded, or which contains any poisonous or deleterious substance within the meaning of this Chapter."

In the case of foods, Section 2039, Revised General Statutes, provides:

"If it be labeled or branded so as to deceive or mislead the purchaser,\*\*\*"

Under these provisions of the law I think the sale of this drink, labeled "Florida Orange", would be termed unlawful.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### CITRUS FRUIT INSPECTORS—OATH AND BOND

July 26, 1926.

*Hon. Nathan Mayo,  
Commissioner of Agriculture,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 24th inst., as follows:

"Section 9 of Chapter 10103, Laws of Florida, Acts of 1923, providing for the appointment of Citrus Fruit Inspectors, specifies that all such inspectors shall give a good and sufficient bond in the sum of One Thousand (\$1,000.00) Dollars, payable to the Governor of the State of Florida.

"Now for your information, we wish to explain that these inspectors are employed by the Supervising Inspector of the Department of Agriculture from time to time as their services are needed, after which they are appointed by the Governor, their commissions being issued several days later and dated on the date they entered service of the State.

"This method of procedure was followed last citrus season, in order to prevent the payment of salaries prior to the time their services were needed. To begin with, only ten or twelve inspectors are needed, but the number must necessarily be increased to provide inspection service at the various packing houses as they give notice of their intention to open and begin operation.

"Now our observation last season was that only a small number of the inspectors employed (126) complied with the provisions of Section 9 of the law, by signing and returning the necessary papers furnished them for the purpose of giving bond.

"Under the circumstances, we would be pleased to have your opinion as to whether or not, it would be legal to allow the Citrus Fruit Inspectors to perform their official duties without giving bond."

Under the provisions of Chapter 10103, Acts of 1923, an inspector would not be qualified to act until the oath and bond were given. If an inspector could act without having filed this oath and given bond, and someone should be advised of this fact they could possibly hold the inspector personally liable and might cause considerable trouble and con-

fusion. No inspector would be fully clothed with legal authority until he had filed the oath and given the bond.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

INDUSTRIAL SCHOOL—PAROLE OF GIRLS FROM  
—COMMITMENT OF INCORRIGIBLE BOYS FROM  
INDUSTRIAL SCHOOL TO JAIL

December 1, 1926.

*The Board of Commissioners,  
of State Institutions,  
Tallahassee, Fla.*

Gentlemen:

On November 30th, at a regular meeting of your Board, I was requested to advise the Board as to the law on two questions, viz.:

1. Have the County Judges a right to order a release of a girl committed to the Florida Industrial School for Girls?
2. Has the Board the right to commit a boy to prison under his alternative sentence when it is found unwise to undertake to keep such boy in the Florida Industrial School for Boys in Marianna?

As to the first question, Section 6330, Revised General Statutes, provides:

“The term of commitment (meaning the commitment of girls to the Florida Industrial School for girls) to said institution shall be indeterminate, dependent upon good conduct and moral improvement and advancement; and the Board shall make

just, but liberal provisions whereby continued excellent deportment shall entitle the inmates to conditional parole and final dismissal.\*\*\*"

Under this Statute, the term of the commitment shall be indeterminate and the Board of Commissioners of State Institutions alone have the right to parole or order the release of any girl committed.

As to the second question, Section 6321 of the Revised General Statutes provides:

"When a child is sentenced to said school (meaning the Industrial School for Boys) and the Board of Commissioners of State Institutions deem it inexpedient to receive him or he is found incorrigible, or his continuance in the school is deemed injurious to its management and discipline, they shall certify the same upon a mittimus upon which he is held, and the mittimus and convict shall be delivered to any proper officer, who shall forthwith commit such child to the jail or State Prison according to his alternative sentence.\*\*\*"

Under this provision, the boy whose case was before the Board on yesterday can be committed under his alternative sentence when the endorsement is properly made on the commitment.

Very truly yours,

J. B. JOHNSON,  
Attorney General.



## COLLEGES—RESTRICTING ATTENDANCE IN

March 12, 1926.

*Hon. P. K. Young, Chairman,  
The Board of Control,  
Tallahassee, Florida.*

Dear Sir:

In the matter of restricting attendance at the several State institutions under your control, we beg leave to quote the Statute on this question or as near as this question is touched by the Statutes, as follows:

Section 612, Revised General Statutes, provides:

“\*\*\*The several departments of the said college and the said university shall be open to applicants for admission who are citizens of this State at the lowest rate and expense consistent with the welfare and efficiency of the respective institutions, and as may be established from time to time by the said Board.\*\*\*”

Section 616 of the Revised General Statutes in prescribing the powers and duties of the Board of Control provides:

“The Board of Control shall have jurisdiction over and complete management and control of all the said several institutions \*\*\* and is hereby invested with full power and authority to make all rules and regulations necessary for their governance not inconsistent with the general rules and regulations made or which may be made at any joint meeting of the said Board with the State Board of Education.\*\*\*and to care for and maintain the same, and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of each and every of the said institutions necessary or requisite to carry out fully the purposes of this Act, and for raising to

and maintaining them at the proper efficiency and standard as required in and by the provisions of law, but at all times subject to the supervision and control of the State Board of Education."

Section 619 of the Revised General Statutes provides:

"That the said Board of Control are hereby authorized and empowered to provide a system and course of written examination by questions and answers for all the public high schools in the State, and that no pupil shall be admitted to said high schools or be advanced to any successive grade therein, or shall be permitted to enter any institution created or maintained in and by this Act until such examinations have been had according to such procedure, and the result of said examinations shall have been approved by the said Board of Control in each instance and a certificate of such admission or advancement by the said Board of Control, and the said Board shall have power to alter and change these rules and regulations from time to time where it shall be deemed necessary, and shall provide all the necessary blanks and distribute the same for such purpose."

Section 623 of the Revised General Statutes provides:

"No student shall be admitted to the University of Florida who has not passed a satisfactory examination at some high school and through the twelfth grade as now established, or some other institution of learning having an equivalent of instruction to the twelfth grade. The State Board of Control may change the grade at any time they may see fit as a prerequisite to such entrance. No person shall be admitted to said university except white male students having the prerequisite qualifications to which the said Board of Control may add

others in their judgment and discretion, except to the Normal Department thereof for the instruction and education of teachers; when both male and female students may be admitted to that department."

Section 632 of the Revised General Statutes provides in part:

"The design of the Florida State College for women shall be to teach and instruct in all higher branches of education, and in all the useful arts and sciences that may be necessary or appropriate to be taught in like institutions, and as may be deemed requisite and necessary from time to time by the joint Boards herein provided for its governance and control.

"None but female white students shall be admitted to this institution, and no student shall be admitted therein unless and until she shall have passed a satisfactory examination in some high school of this or some other State having a like standing and through or beyond the tenth grade as now established for the high schools in this State, or such other grade not lower than the tenth grade as may be hereafter established, and no student from any other State shall be admitted to such institution, except by the consent and upon the certificate of the State Board of Control."

Of course, there is a limit to the accommodations in the dormitories at these several institutions. It is possible that the law would warrant or that the law would be construed as warranting the Board of Control the Board of Education in limiting the attendance at these institutions where the facilities and appropriations necessary to run them at a high standard of efficiency had been reached but it would be dangerous to limit the attendance unless the full capacity of the facilities of teaching force was clearly patent. If there are more Florida students applying for admission into these in-

stitutions than the institutions can accomodate, then it will become necessary to base the admissions on some system of merits to be worked out by the Board of Control and the State Board of Education.

It may become necessary for the Legislature to regulate this matter by Statute, or to definitely give to the Board of Control and to the State Board of Education or to either of said Boards the authority to control and limit the number of admissions. As the law now stands, and if the same is not amended then some definite merit system would have to be put in force. The merit system peculiarly appeals to me because if adopted the deserving or the ones earning it would get the benefit of these institutions. In undertaking to regulate this matter, we will have to go very carefully and use the fairest good judgment. Otherwise, the institutions are heading for criticism.

With best wishes, I am,

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### STATE BUILDINGS—APPROPRIATIONS FOR

February 18, 1926.

*The Honorable,  
The Board of Control,  
Tallahassee, Fla.*

Gentlemen:

I am in receipt of your favor of the 16th inst., as follows:

“The Legislature in 1925 appropriated funds for the erection of the following buildings at the University of Florida:

Building for chemistry and pharmacy	\$ 200,000.00
First Unit of Horticultural building	125,000.00
New building College of Engineering	95,000.00
	<hr/>
	\$ 420,000.00

"On account of the increase in the cost of building the Board is finding it difficult to erect the three buildings for the appropriations in accordance with its original plans.

"For the above reason it desires to know if in your opinion it has any authority to use the entire sum of \$420,000.00 for the erection of any two of the three buildings."

As to the appropriations made for your Department, the Act carries this provision:

"\*\*\*provided, however, that any item or items in the budget of any institution or department thereof, or of the State Plant Board may, if deemed advisable by the Board of Control or by the State Plant Board be increased, or decreased, or eliminated, or any new item or items may be added; but in no event shall the sums hereinbefore appropriated be increased."

It is my opinion that it was generally understood when this provision was incorporated in the Bill it was only intended that it should apply to administrative items such as for maintenance, pay of instructors and general expenses of the institutions. I would not take the responsibility of advising that it included appropriations made for definite buildings. When an appropriation is made for a building, it is to be supposed that a building within the amount of the appropriation will be constructed. I would not advise that one of these buildings be eliminated and the amount authorized for



the eliminated building used to supplement either one or both of the other building appropriations.

Very truly yours,

J. B. JOHNSON.

Attorney General.

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FLORIDA FARM COLONY—TRANSFER OF PERSONS  
FROM OTHER INSTITUTIONS TO

February 17, 1926.

*Board of Commissioners  
of State Institutions,  
Tallahassee, Fla.*

Gentlemen:

The matter of the transfer of the boy, Harlie Goodrich, from the Florida Industrial School for Boys to the Florida Farm Colony has been looked into by me.

I do not find in the law any authority for making this transfer without a regular proceeding. The law prescribes the procedure whereby persons are committed to the Industrial School for Boys; also those committed to the Florida Farm Colony.

In the case of this boy, his commitment is to the Industrial School for Boys and he has not been adjudged epileptic or feeble-minded. In the provisions of Chapter 7887, Acts of 1919, providing for the establishment of the Florida Farm Colony, Section 5 provides:

*"All persons adjudged to be epileptic or feeble-minded and who have heretofore been committed under the laws of this State to the Florida State Hospital for the Insane, or the Boys' Indus-*

trial School at Marianna, or the Girls' Industrial School at Ocala, or any other such institution, shall, after the Florida Farm Colony for Epileptic and Feeble-Minded has been fully established and ready for the reception of inmates, be committed thereto under such rules and regulations as may be prescribed by the Board of Managers as provided herein."

You will note in the provision for the transfer from these several institutions to the Florida Farm Colony, it provides that the person shall have been adjudged to be epileptic or feeble-minded.

If this Boy, Harlie Goodrich, is to be transferred to the Florida Farm Colony, then the proper proceedings for this purpose should be had.

Very respectfully,

J. B. JOHNSON,

Attorney General.

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# INDUSTRIAL SCHOOL FOR BOYS—RECEIVING, PAROLING AND DISCHARGING BOYS

December 29, 1925.

*The Board of Commissioners  
of State Institutions,  
Tallahassee, Fla.*

Gentlemen:

Having been requested by the Board of Commissioners of State Institutions to advise them of the law governing the receiving, paroling or discharging of persons committed to

the Industrial School for Boys at Marianna, Florida, I respectfully advise that the following Sections of the Revised General Statutes cover the questions submitted:

"6311. *Department of inmates; board may parole.* That the Board of Managers shall institute a system of merits and demerits in the department of the inmates of said school, and shall when deemed advisable parole boys, subject to conditions prescribed by the said Board."

"6315. *Child committed to be kept, disciplined and instructed.* Every child convicted and sent to the Florida Industrial School for Boys shall there be kept, disciplined, instructed, employed and governed, under the direction of the Board of Commissioners of State Institutions, during the time for which he is committed, unless he is sooner discharged as reformed, or remanded to prison under the sentence of the Court as incorrigible upon information of the Board of Managers as hereinafter provided."

"6318. *Convicted persons under eighteen years may be sent to Industrial School for Boys.* When a person under the age of eighteen years is convicted before any Court of any offense punishable by imprisonment in the County jail, or in the State prison, not for life, such Court may sentence him to the Florida Industrial School for Boys, or to such other punishment provided by law for the same offense. If to the Florida Industrial School for Boys, the sentence shall be conditional that if such person is not received or kept there for the term of their sentence, unless sooner discharged by the Board of Commissioners of State Institutions, he shall then suffer such alternative punishment as

the Court of Justice may designate in or by such sentence; but no child shall be committed to the Florida Industrial School for Boys who is blind, deaf and dumb, non compos or insane."

"6321. *Board may, for certain reasons, refuse to receive persons committed; incorrigible inmates committed to jail or prison.* When a child is sentenced to said school, and the Board of Commissioners of State Institutions deem it inexpedient to receive him or he is found incorrigible, or his continuance in the school is deemed injurious to its management and discipline, they shall certify the same upon the mittimus upon which he is held, and the mittimus and convict shall be delivered to any proper officer who shall forthwith commit such child to the jail, or State prison, according to his alternative sentence. The Board of Commissioners of State Institutions may discharge any child as reformed; and may authorize the Superintendent under such rules as they prescribe, to refuse to receive any person sentenced to said school, and his certificate thereof shall be as effectual as their own."

"6322. *Commitment of inmates on probation.* The Board of Commissioners of State Institutions may commit any inmate on probation, and upon such terms as they deem expedient, to any suitable inhabitant of the State, for a term within the period of his sentence, such probation to be conditioned upon good behavior and obedience to the laws of the State. Such child shall, during the term for which it was originally sentenced to the Florida Industrial School for Boys, be also subject to the care and control of the Board of Commissioners of State Institutions, and on their being satisfied at any time that the welfare of the child would be promoted by

his return to the school, they may order its return and may enforce such order by application to the Judge of any Court having original criminal jurisdiction, or judge of the police or municipal Court for a warrant for such purpose, which may be served by any officer authorized to serve criminal process. On his recommitment to the school such child shall be held and detained under the original mittimus."

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### CEMETERY—REMOVAL OF

June 8, 1925.

*Dr. S. G. Thompson,  
Bureau of Vital Statistics,  
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of June 6th with enclosure, which I herewith return, I beg to say:

There are no Statutory provisions in this State regarding the removal of a cemetery. Therefore, it appears to me that the only procedure which is necessary is for all parties at interest to procure a disinterment and reinterment permit from your bureau. The fact that the families of some of the people whose remains are in the old cemetery referred to can not be located raises a rather perplexing question.

It appears to me that the logical procedure would be for the proper officials of the Catholic organization holding title to the cemetery on Florida Avenue, Tampa, to file a Bill in Chancery making all known parties defendants and all un-



known parties defendants setting up the reason and necessity for the removal of the remains from the old cemetery, praying for a decree of Court allowing the remains to be disinterred by proper permits from the State Board of Health, and be reinterred at some other place. The known defendants could answer admitting the allegations and consenting to the decree and a decree pro se could be taken against the unknown defendants upon whom constructive service would have to be obtained by publication.

Frankly, I know of no precedent upon which to base this procedure, but it occurs to me as being the logical and orderly manner in which the matter could be adjudicated and accomplish the desired results.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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BOARD OF OSTEOPATHIC EXAMINERS  
—MEMBERSHIP

July 9, 1926.

*Mr. Addison O'Neill, Sec.-Treas.,  
Board of Osteopathic Examiners,  
P. O. Box 525,  
Daytona Beach, Florida.*

Dear Sir:

Your favor of the 7th inst., with reference to members of the State Board of Osteopathic Examiners, has been received.

It was the intention of this law that no two members of this Board should be of the same Judicial Circuit, whether it

was the original Board or members appointed to fill vacancies.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CHIROPRACTOR OR OSTEOPATH—SIGNATURE OF  
ON DEATH CERTIFICATE

July 19, 1926.

*Dr. Stewart G. Thompson, Director,  
Bureau of Vital Statistics,  
Florida State Board of Health,  
Jacksonville, Florida.*

Dear Sir:

Your favor of July 17th, inquiring if a chiropractor or an osteopath would be authorized to sign a death certificate, has been received.

The law provides that an attending physician shall sign the death certificate. Of course, the law then provides for this to be done where death occurs without an attending physician. As to whether or not an osteopath or chiropractor would be considered as an attending physician and a death certificate by them received as authentic, I am unable to say.

In my opinion, where there is no attending physician the death certificate should be made out in accordance with the provisions of Section 2077, Revised General Statutes. I doubt if the Courts would recognize an osteopath or chiropractor. Yet the Courts might do so.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## ENGINEERS—RENEWAL OF CERTIFICATES

July 30, 1926.

*C. S. Hammett, Esq.,  
State Board of Engineering Examiners,  
200 East Forsyth Street,  
Jacksonville, Fla.*

Dear Sir:

Your favor of the 28th inst., with reference to certificates to professional engineers, has been received.

I am inclined to the opinion that you would be authorized to issue these renewal certificates to engineers who have continuously resided in the State of Florida. If they have moved out of the State and lost their citizenship and then moved back into the State, I do not think you would be authorized to renew their certificates. The law is not plain on this question but construing it in connection with payment of license taxes to practice law, I think that would be the reasonable construction.

I hesitate to render opinions on questions of this kind unless I have some definite guide or precedent or Court ruling to go by. I think I would allow renewals to bona fide residents of the State if you are satisfied their character is good and that they are otherwise qualified.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## OPTOMETRY LAW—REVOCATION OF LICENSE

August 9, 1926

*Dr. W. F. Davey, Sec.,  
State Board of Optometry Examiners,  
Daytona Beach, Florida.*

Dear Doctor:

Your favor of the 7th inst., with reference to enforcing the Optometry Law, has been received.

Under this law you have the right to hear and determine a case as to whether or not you would revoke a license. You would have to give the notice provided for in the Statute and then your procedure would be under such rules and regulations as the Board prescribes. Your action in the matter can only go to the extent of revoking the license.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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BIRTH CERTIFICATE—CHANGING NAME ON

September 15, 1926.

*Mr. Stewart G. Thompson, Director,  
Bureau of Vital Statistics,  
Jacksonville, Fla.*

Dear Sir:

Your favor of the 11th instant, with reference to changing the name on a birth certificate, received.

Section 3275, Revised General Statutes, authorizes Judges of the Circuit Court to grant orders and decrees chang-

ing names. This is the only method that I know of whereby these names can be changed.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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HOTEL COMMISSION—SALARIES

January 27, 1925.

*Hon. Jerry W. Carter,  
Hotel Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of January 26th asking my opinion as to what effect items in the General Appropriation Bill, which may be passed by the Legislature of 1925, would have upon the provisions contained in certain sections of the Revised General Statutes, as amended by Chapter 9264, Acts of 1923, I beg to say:

Section 211, Revised General Statutes, as amended by Section 1 of Chapter 9264, provides for the appointment of the Hotel Commissioner and fixes his salary at \$3600.00 per year. Section 2147, Revised General Statutes of Florida, as amended by Section 8 of Chapter 9264, Acts of 1923, authorizes the Hotel Commission to appoint and employ his office help, traveling inspectors and supervising architects, making it discretionary with the Hotel Commissioner as to how many he shall appoint and employ, and this section also limits the salary of such employees, but fixes the discretion in the Commissioner to fix the salary at any amount less than the limit named in the Statute.

Section 2151, Revised General Statutes of Florida, as amended by Section 9 of Chapter 9264, provides the appropriation for the support of the Department and appropriates



so much of all money coming to the Department through its operation as may be necessary to cover its expenses and allows the Department no funds from any other source.

Acts of the Legislature can not be amended or repealed by items appearing in the General Appropriation Bill.

If the present law is to remain in force, there is no need whatever for the Department of the Hotel Commission to be mentioned or referred to in the General Appropriation Bill, and in fact, should the affairs of this Department be included in the General Appropriation Bill, such inclusion could not affect the existing Statutes on the subject.

I may say, however, that it is entirely proper for, and it is the duty of, the Budget Commission to have full report from this Department and to consider the revenue and expenses of this Department, and thereupon to make such recommendations as it may deem proper to the Legislature, looking to the economical operation of the Department, and therefore, may I suggest that you prepare and present to the Budget Commission a detailed report of the operation of your Department under the provisions of Chapter 9264, Acts of 1923.

Yours truly,

RIVERS BUFORD,  
Attorney General.

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STATE EQUALIZER OF TAXES—PERMANENT  
RECORD

April 18, 1925.

*Hon. Marion L. Dawson,  
State Equalizer of Taxes,  
Tallahassee Fla.*

Dear Sir:

Replying to your letter of April 13th, I beg to say it is my opinion the Legislature contemplated that a permanent

record of the doings of the office of State Equalizer of Taxes should be kept and reports should be made as other departments to the Governor.

I am therefore of the opinion that the printing of the reports of your department should be paid for from the General Printing and Advertising Fund, and if the printing of these reports is not included in the State Printing Contract, then the printing of the same should be let upon competitive bids.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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#### HOSPITALS—TAKING GUESTS AS LODGERS

January 28, 1926

*Hon. Jerry W. Carter,  
Hotel Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Your favor of the 27th inst., requesting advice as to whether or not buildings used for hospitals and taking in guests as lodgers comes under the jurisdiction of the Hotel Commission, received.

I think the Statute is very plain in defining what shall be taken and considered a hotel or rooming house. Paragraph 2 of Section 3 of Chapter 9264, Acts of 1923, amending Section 2124 of the Revised General Statutes, provides:

“Every building, apartment house or other structure kept, used, maintained, advertised, as or held out to the public to be a place where sleeping or housekeeping accommodations are furnished for pay to transient or permanent guests, or tenants, in which five or more rooms are used for the ac-

commodation of such guests, but which does not maintain dining rooms or cafes in the same building or in buildings in connection therewith, shall, for the purpose of this Article, be deemed a roominghouse, and upon proper application, the Hotel Inspector shall issue to such above described business a license to conduct a rooming house."

If any building or structure is undertaking to operate or call itself a hospital and it can be proved that it is taking in transient or permanents, who are not taken for the purpose of medical treatment, then you should consider it a hotel or rooming house as the case might be.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### CONSTRUCTION PERMITS—ISSUANCE

February 18, 1926.

*Hon. Jerry W. Carter,  
Hotel Commissioner,  
Tallahassee, Fla.*

Dear Mr. Carter:

I am in receipt of your letter of the 17th inst., as follows:

"I respectfully request your official advice as to whether or not the Hotel Commission, or a supervising architect acting under the authority vested in the said Hotel Commission, as provided by Statute, can refuse to issue a second permit for the erection of a second building upon an area of ground where the building designated by the first permit is, in a major portion, already erected, where it is an established rule and custom that when it is decided to make changes in a build-

ing while in the process of construction, that the owner or architect merely submit blue prints showing the changes, and get the signature and seal of the supervising architect upon the application for change.

"I am submitting herewith copy of a letter from the Honorable George L. Pfeiffer, Supervising Architect of the Southwest District, who has attempted to set forth in detail the circumstances in a case where he refused to issue another permit. The advice I would like to receive is whether or not he was acting in his rights when he refused to issue the second permit.

"Thanking you for the courtesy and co-operation you have given this Department in the past, I beg to remain,"

I also note copy of your letter from your Supervising Architect, Mr. George L. Pfeiffer and also additional letter from you to myself of this date.

Section 2142 of the Revised General Statutes was amended by Section 7 of Chapter 9264, Acts of 1923, and in such amendment the following provision was made:

"Provided further, that before the erection or remodeling of any building for use as a hotel, apartment house, rooming house or restaurant is begun, the registered architect's plans with detailed specifications shall be approved by the supervising architect of the Hotel Commission; and all plans, specifications and drawings submitted for the purpose of securing building permits from any state, county or municipal building inspector or other officer having like jurisdiction, shall bear the signature and seal of the architect and supervising architect of the Hotel Commission before said building permit is issued; and when such plans and specifications are submitted to the supervising architect of the Hotel Commission for approval, they shall be ac-

accompanied by a remittance of an amount equal to the inspection fee prescribed for a hotel, apartment house, rooming house or restaurant of such size in Sections 2127 and 2128 of the Revised General Statutes."

The provision above quoted undoubtedly leaves it to the judgment and discretion of the Supervising Architect as to whether or not the plans for the construction of a hotel building shall be approved by him or not and as to whether or not he shall grant his permit for the construction of such building. Of course, this discretion could not be arbitrary but would have to be based in the refusal of such permit on reasonable grounds.

In the case in question it is made to appear that a permit has been approved and granted for the construction of a certain hotel building on a certain lot of land; that the owner is now asking for a second permit to construct a building identical with the plans, specifications and construction of the building covered by the permit already issued, said permit having been issued on November 7, 1925 and numbered 1612.

The law does not contemplate that a number of permits shall be issued covering the same building, unless change should be made in the plans of the construction that would require an additional permit. The law does not provide that the Architect be authorized to issue a number of permits or more than one permit for the construction of the same building at the same location. One permit is all the Supervising Architect is authorized to issue. Of course, you will appreciate the fact that where material changes are made in the plans and in the construction, then a supplementary permit should be issued or the change in



the plans and construction should be approved by the Supervising Architect of the Hotel Commission.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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OYSTERS—SANITARY REGULATIONS

July 10, 1926.

*Hon. E. L. Filby, Chief Engineer,  
Florida State Board of Health,  
Jacksonville, Florida.*

Dear Sir:

Your favor of July 7th, with enclosure of proposed Rules and Regulations governing the shucking and handling of oysters in Florida, has been received.

I note one set of these rules are headed:

“RULES AND REGULATIONS GOVERNING THE OPERATION OF OYSTER SHUCKING AND PACKING HOUSES IN THE STATE OF FLORIDA, BY AUTHORITY OF SECTION 1233 OF THE REVISED GENERAL STATUTES OF FLORIDA.”

I note Section 1233 has reference to and governs the shell fish industry. It was not contemplated in the passage of this Shell Fish Act that the grant of powers would include the powers enumerated in the Rules and Regulations proposed.

I do not think the Commissioner of Agriculture would have the authority to make or enforce the Rules suggested. By Section 2008, Revised General Statutes, the State Board of Health is given blanket authority as follows:

"It shall be the duty of the State Board of Health to formulate such rules and regulations for the preservation of the public health, as in their judgment, they may deem necessary, and to meet at any time they may deem necessary, to formulate such additional rules and regulations for the preservation of the public health, as in their experience may suggest, and they shall have the same published in such place and in such manner as they may deem best to give greatest publicity to the same."

Any rules and regulations governing this matter would have to be promulgated by the State Board of Health and on this point I doubt very much if the State Board of Health would have the authority to make and promulgate rules governing this industry generally. In particular cases where the facts warrant it we are quite sure they could make rules and regulations to prevent or eliminate a menace to the public health. It would be wise to keep these matters in mind and have the laws amended at the next session of the Legislature to cover these questions.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### ICE CREAM—RECONSTRUCTED

November 4, 1926.

*Hon. E. L. Filby,  
Chief Engineer,  
State Board of Health,  
Jacksonville, Fla.*

Dear Mr. Filby:

Your favor of the 3rd inst., asking if there is any law prohibiting the manufacture of what might be termed "re-

constructed ice cream," that is to say, ice cream manufactured from powdered milk, sweet butter, water, gelatin, etc., has been received.

I know of no statute prohibiting the manufacture of this ice cream provided that it was properly branded or labelled. This would likely come under the provisions of the Pure Food and Drug Act and the regulation for properly branding foods and drugs.

I acknowledge receipt of copy of letter from the New York State Commission on Ventilation. I am writing them today.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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DEPUTY SHELL FISH COMMISSIONER — APPOINTMENT—ARRESTS BY

February 9, 1925.

*Hon. T. R. Hodges,  
Shell Fish Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Complying with your request of February 9th I beg to advise it is my opinion that a Deputy Shell Fish Commissioner should receive from the Shell Fish Commissioner a written appointment or commission authorizing him to act as such Deputy Shell Fish Commissioner,—such appointment or commission should be signed by the Shell Fish Commissioner.

Whether or not a Court would have the legal right to declare an arrest made by a Deputy Shell Fish Commissioner illegal would depend first, upon whether or not the

person assuming to act was legally authorized to act in such official capacity by having received a properly executed appointment from the Shell Fish Commissioner to so act in such official capacity and would depend upon the facts under which he assumed to make the arrest. It is my view that the Shell Fish Commissioner or his authorized Deputy would be authorized to make an arrest without warrant only when they apprehend a person in the act of violating the laws, the enforcement of which the Shell Fish Commissioner is charged with.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

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#### FISHING LICENSES

June 9, 1925.

*Hon. T. R. Hodges,  
Shell Fish Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Replying to your inquiry of this date:

No provision of the "Act to Regulate the Taking of Fish in the Fresh and Salt Waters of the Counties of Escambia, Santa Rosa, Okaloosa, and Walton, of the State of Florida," \*\*\*\*(Senate Bill No. 249) approved May 2nd, 1925, is repealed or in anywise affected by the provisions of the "Act to Create the Department of Game and Fresh Water Fish," \*\*\*\*(Senate Bill No. 215), approved May 26th, 1925.

Therefore, the provisions of said Special Act (Senate Bill, No. 249) as to license taxes, enforcement, etc., are to be observed and applied in the same manner, to the same extent, and with the same effect, as though the general game

and fresh water Fish Act, (Senate Bill, No. 215) approved May 26th, 1925, had not been enacted.

Very truly yours,

RIVERS BUFORD,

Attorney General.

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FISHING—SALT WATER—WHEN ACT EFFECTIVE

July 18, 1925.

*Hon. T. R. Hodges,  
Shell Fish Commissioner,  
Tallahassee, Fla.*

Dear Sir:

I have your inquiry of 17th instant as follows:

“Section 16 of Chapter 10123 entitled an ‘Act to protect and regulate the Salt Water Fishing Industry in the State of Florida, and to declare certain fresh waters in this State salt water for the purpose of this Act and to define certain waters as salt waters,’ passed by the legislature of 1925 and approved by the Governor May 20th. 1925, reads as follows:

“Section 16. This Act shall take effect immediately upon its passage and approval by the Governor.”

“The Prosecuting Attorney for St. Lucie County recently refused to prosecute in the County Court of that County for a violation of this Act, saying that it had not been advertised sufficiently and would not be effective for sixty or ninety days.

“It is my impression that this Act became effective May 20th, on which date it was signed by the Governor and any one violating any of its provisions since that time would be liable for the penalty.



"Kindly give me your opinion regarding this matter and oblige."

The Act referred to—Chapter 10123, Laws of Florida, Acts of 1925,—became effective on May 20th, 1925, the date of its approval by the Governor.

No notice or advertisement of it whatever was or is necessary to put it into effect, and any one violating any of its provisions after the date named is subject to prosecution and punishment therefor.

That prosecuting officers refuse to enforce the Act is a matter for consideration by the Governor.

Very truly yours,

RIVERS BUFORD,  
Attorney General.

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#### DRAG NETS—DISPOSITION

March 11, 1926.

*Hon. T. R. Hodges,  
Shell Fish Commissioner,  
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your favor of March 9th as follows:

"The provisions of Section 5832 of Chapter 8589, Acts of 1921, prohibits the fishing of haul seines or drag nets in certain counties on the East Coast and the penalty places the trial jurisdiction in the Circuit Court where there is no County Court of Record.

"We have made several arrests in a County that has no trial jurisdiction and the Committing Magistrate has been returning the drag nets or seines to the fishermen.

"Section 1273 of the Revised General Statutes of Florida, empowers the Shell Fish Commissioner or his duly authorized Deputies to arrest without warrant but the law does not provide for the delivery of prisoners, illegal nets or gear to anyone.

"I would thank you to advise me if I would be justifiable in delivering the illegal nets to the Sheriff of any other County in the Circuit other than that in which the nets were captured for safe keeping to be placed before the Grand Jury as evidence in view of the fact that such County in which the nets are taken has no jail or place for safe keeping for these nets and the Sheriff of such county refuses to take charge of such nets and I would like to be further advised if my Deputies will be acting within their rights if they allow such prisoners to go on their own recognizance until the Grand Jury convenes.

"Kindly advise me in this connection."

You would be authorized to take charge of and hold illegal fish nets captured by you. Of course, you would be responsible for them and in preserving these nets you could deliver them to the custody of any responsible person, to be forthcoming at the trial. As I understand it, the statutes does not require specifically that they should be delivered to the Sheriff.

In the last paragraph of your letter you ask if your deputies would be acting within their rights if they allowed prisoners to go on their own recognizance until the grand jury convened. You would be authorized to hold anyone arrested by your deputies no longer than twenty-four hours or longer than is actually necessary to get to an officer and have a warrant issued for them. Of course, in instances where you find violators of the law, you can arrest them without a warrant or you can decline to arrest them and then present their cases to the grand jury when it convenes but

when nets and fishing apparatus used unlawfully are taken in the hands of law violators then you should go to the nearest County Judge and swear out a warrant. When a warrant is sworn out it is necessarily placed in the hands of the executive officer of the Court to be served.

If committing magistrates or the County Judges are violating any of the provisions of the statute or refuse to enforce the statutes it is a matter that should be brought to the attention of the Governor, with a view to removing an officer who refuses to discharge his duties. Section 5826 of the Revised General Statutes provides that illegal nets shall be destroyed and leads, corks, and lines belonging to such nets shall be returned to the owner.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### DRAG NETS—USE OF IN MARTIN COUNTY

March 11, 1926.

*Hon. T. B. Hodges,  
Shell Fish Commissioner,  
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of March 9th as follows:

“Section 5832 of Chapter 8589, Acts of 1921 provides as follows:

“‘An Act to amend Section 5832 of the Revised General Statutes of Florida, Relating to Haul Seines or Drag Nets in Certain Counties.

“‘BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

“Section 1. That Section 5832 of the Revised General Statutes of Florida, Relating to Haul Seines or Drag Nets in Certain Counties, be and the same is hereby, amended to read as follows:

“Section 5832. Haul Seines or Drag Nets Prohibited in Certain Counties.—It shall be unlawful for any person, persons, firm or corporation to fish, or cause to be fished, any haul seine or drag net in any of the inside salt waters in the Counties of Brevard, St. Lucie, Palm Beach, Broward, and all inside salt waters in Dade County north of Biscayne Bay. Any one violating any of the provisions of this section shall be fined in the sum of not to exceed Six Hundred Dollars (\$600.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.”

“Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

“Section 3. This Act shall take effect upon its becoming a law.”

“Since the passage of this Act Martin County has been created out of a portion of St. Lucie and Palm Beach Counties and the Prosecuting Attorney of Martin County contends that Martin County is not subject to the provisions of this law on account of having been created since its passage.

“To my mind this contention is ridiculous, but I would like to have your opinion in regard to the matter for presentation to the court in case of trial for violations of this Act.”

Section 5832, Revised General Statutes, quoted by you applies to the Counties of Brevard, St. Lucie, Palm Beach and Broward. This Act is supposed to be general but it is local in its application and I would not authorize a prosecution under this section for an act committed in what is

now Martin County. Criminal statutes have to be construed strictly and unless this Act was revived or rather held in full force for Martin County, I am afraid the prosecution in that County would not obtain.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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TICK ERADICATION—APPROPRIATION

June 1, 1925.

*Dr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

I have your request that I advise the State Live Stock Sanitary Board as to whether or not the tax accruing under the one-half mill levy authorized by Chapter 9201, Acts of 1923, Laws of Florida, will continue to be annually available for the purpose of continuing systematic tick eradication under the provisions of said Chapter in the event the Legislature, at its present session, makes no provision for an appropriation of funds for this purpose.

It is my opinion that if Chapter 9201, Acts of 1923, is neither amended nor repealed by this session of the Legislature the provisions of Section 15 of said Chapter makes the funds therein referred to available each year for the purposes mentioned without any further legislative action or appropriation.

Yours very truly,

RIVERS BUFORD,  
Attorney General.



TICK ERADICATION—TIME AND MANNER OF  
STARTING WORK,

June 20, 1925.

*Dr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 15th I beg to say my construction of that part of Section 8 of Chapter 9201, Laws of Florida, Acts of 1923, reading as follows:

“Upon any zone being freed of the cattle fever tick, the Board shall enter its finding of such fact upon the minutes of said Board, and shall have authority at the same time to designate and commence systematic tick eradication work in the adjacent or adjoining zone or zones.”

and that part of Section 9 of the same Chapter, reading as follows:

“The State Live Stock Sanitary Board shall commence systematic tick eradication work in zones designated as zones numbers two and thirteen, and also in Gadsden County, and that part of Duval County lying west and north of St. Johns River.”

is this:

That the State Live Stock Sanitary Board was required to commence the work of systematic tick eradication as near as possible simultaneously in zones designated as Zones numbers Two and Thirteen, and also in Gadsden County, and that part of Duval County lying west and north of the St. Johns River; and

That when the work had been commenced and completed in any of said Zones that it should then be carried forward by extending the same to adjacent or adjoining zone or zones; and

That the Board having commenced and completed systematic tick eradication in Zone Thirteen and having entered that fact and finding upon the minutes of the Board, the Board shall thereupon have authority at that time to designate and commence systematic tick eradication work in the adjacent or adjoining zone or zones; and

That if the State Live Stock Sanitary Board did not commence work in the other zones or parts of zones designated in the above quoted part of Section 9, at or near the same time that it commenced work in Zone 13, it was and is a continuing duty upon the Board to commence work in such designated zone, or parts of zones, but that such duty does not preclude the Board from proceeding under the above quoted part of Section 8.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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#### TICK ERADICATION—FUNDS

March 19, 1925.

*Dr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of March 18th asking my advice as to whether or not money derived from various sources, including seizing and feeding charges in connection with the conduct of tick eradication, and which has been deposited in

the State Treasury is subject to warrant for payment of contingent and incidental expense incurred by the State Live Stock Sanitary Board.

It is my opinion such funds are so available.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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INTOXICATING LIQUOR—TRANSPORTATION INTO  
FLORIDA

October 16, 1926.

*George A. Parker, Esq.,  
Prohibition Administrator,  
Boston, Massachusetts.*

Dear Sir:

I am in receipt of your favor of the 13th instant.

The second paragraph of your letter is as follows:

“This office now has an inquiry from one of the heirs of the late Annie G. Johnson, formerly of Fitchburg, Mass., as to whether or not she may transfer her share of the beverage liquors left by Mrs. Johnson, from Fitchburg, Mass., to her home in Florida. This office can issue a permit provided you give your consent to the transfer of such liquors.”

You will appreciate the fact that there is nothing in the Florida statutes authorizing the Attorney General to pass on questions of this kind or to decide whether or not liquor can be possessed in or transported into the State of Florida. This question depends entirely upon the provisions of the Federal statutes and the construction placed thereon by the Department and by the Courts. Should I render an opinion that possession or transportation of liquor in certain instan-

ces were in violation of the law my opinion would not give protection to anyone should they be prosecuted and the Courts hold that the act was unlawful.

The Supreme Court of the State of Florida, in the case of *Hall v. Moran*, 81 Fla. R., 706, 89 Southern 104, held:

"The Eighteenth Amendment extends the Federal power to the interstate possession of intoxicating liquors for beverage purposes and does not prohibit the possession or consumption of such liquors, and privileges and immunities duly conferred by Congress upon citizens of the United States, to possess and consume intoxicating liquors, unconnected with the organic prohibitions may be protected by the Fourteenth Amendment from abridgement by State laws.

"The Volstead Act of Congress, consistently with the Eighteenth Amendment to the Federal Constitution, makes it unlawful to possess intoxicating liquors except as permitted by that Act, and expressly makes it lawful 'to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only,'\*\*\*provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein.' The State statute makes it unlawful to possess intoxicating liquors except as stated in the Act, and also provides that it shall not be 'unlawful for any person over the age of twenty-one years to possess,'\*\*\* in such person's bona fide residence for the personal use of himself' and family 'not exceeding four quarts of fermented\*\*intoxicating liquors\*\*either or both; provided\*\*\*such person obtained such possession before this Act became a law.' HELD, that

in so far as the State statute limits the quantity of such liquors that a citizen of the United States may possess in his bona fide residence for family use, if lawfully acquired and used, such State provision, conflicts with a dominant Federal law, and to that extent the State Statute is inoperative." Headnotes 9 and 11.

In the case of the application of the heirs of Annie G. Johnson to transport liquors from Fitchburg, Mass., to her home in Florida, I would not undertake to say whether or not this would be or would not be a violation of the Prohibition Laws. Under the decision of the Supreme Court of Florida in the Hall v. Moran case cited, it would be safe to take the position that the Federal law in its provisions would govern. The particular facts in each case would have to be taken into consideration in passing upon questions of this kind.

While I have advised that in my opinion the transportation of a reasonable amount in the personal possessions for use as medicine would not be a violation of the law, when it comes to transporting an appreciable amount of liquor either as personal baggage or by shipment from out of the State into the State I would not undertake to give an opinion. As I understand it, any permit or opinion by me would furnish no protection to anyone.

The liquor laws of Florida are not printed in separate book or pamphlet. They are only printed in the Revised General Statutes and Session Laws of the Legislature.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

P. S. Since writing the above I have located a pamphlet which contains some laws relating to the manufacture, sale, etc., of intoxicating liquors, which is enclosed herewith.



## AUCTIONEERS—LICENSE TAX

February 10, 1926.

*Hon. Walter J. Rose, Chairman,  
Florida Real Estate Commission,  
Orlando, Florida.*

Dear Sir:

Your favor of the 8th inst., asking whether or not auctioneers should be required to pay a license fee under the Real Estate Broker's Law, received.

If they confine their activities strictly to auctioneering, then they would not be required to pay the license under the Real Estate License Law, as they have already paid their license fee as an auctioneer. If they engage in business as a real estate broker or salesman as contemplated by the law then they would be required to pay a license tax as such broker or salesman in addition to the auctioneer's license fee.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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REAL ESTATE BROKER'S LAW—REVOCATION OF  
LICENSE

January 11, 1926.

*Hon. Walter W. Rose, Chairman,  
Florida Real Estate Commission,  
6 Phillips Building,  
Orlando, Florida.*

Dear Sir:

Your favor of the 6th inst., with reference to members or agents of your Commission appearing in matters pertain-

ing to the enforcement of the Real Estate Commission Law, received.

It will be all right for members of the Commission to appear and represent the Commission before the County Judge in the matter of revocation of licenses under the provisions of Section 9 of the Act. The proceeding to revoke a license or permit is a special proceeding and we think it would be perfectly proper to have a member of the Commission or their authorized representative conduct the matter before the County Judge.

Prosecutions under the provisions of Section 12 of the Act would have to be conducted by the prosecuting attorney as provided in the Act or by an attorney employed for the purpose. In other words, it would not be proper for a member of the Commission or the Commission's representative to conduct criminal prosecutions.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### REAL ESTATE BROKERS—LICENSE TAX

November 26, 1926.

*Hon. Walter W. Rose, Chairman,  
Florida Real Estate Commission,  
Attention Mr. A. Valz, Sec.,  
Orlando, Florida.*

Dear Sir:

Your favor of November 23rd, with reference to fees of applicants for license or permit to do real estate business in Florida, has been received.

It is my opinion that where the application is denied by reason of a patent ineligibility of the applicant, the fee

should be returned. Where the Commission has to make an investigation and ineligibility does not appear, on the face of the application, then the fee should be charged, and collected.

The same principle would apply which applies in the case of applicants for admission to the bar and examinations for teachers. Where one applies for admission to the bar, and upon the examination the applicant fails, the fee is not returned. Where the person applies for a certificate to teach school and fails upon examination, the fee paid is not returned. I think the same rule would apply in this case. Where you deny the application the fee should be returned. Where the application is received and passed upon, then the registration fee should be retained, whether the applicant is allowed to register or not.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### FISH DEALER—RETAIL—LICENSE TAX

August 8, 1925.

*Hon. J. B. Royall,  
State Game Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of August 7th in which you ask me to advise you the proper license to be charged certain fishermen, I beg to say:

It is my opinion under the provisions of Chapter 10133, Acts of 1925, if a person is engaged in catching fish and selling and delivering them in bulk in quantities of one-half barrel or more at a time to a dealer, who purchases them

for shipment, or sells fish to any other consumer, but does not himself ship fish in bulk, such person should pay the license tax required of a retail fish dealer. Of course, every boat must be licensed which is used in the fishing industry and it is immaterial by whom the license is paid. If a wholesale or retail dealer hires another to fish for him at a regular or agreed wage, then such person so working for wages would not be liable for license, but a person fishing for a wholesale or retail dealer who is paid for his fish by the pound is himself a dealer and should pay a dealer's license.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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#### FISHING LICENSES FOR NON-RESIDENTS

August 8, 1925

*Hon. J. B. Royall,  
State Game Commissioner,  
Tallahassee, Fla.*

Dear Sir:

I have your request of the 7th instant asking me to advise you my construction of certain parts of Chapter 10133, Laws of Florida, Acts of 1925, and, especially in regard to fishing license for non-residents of the State of Florida.

I have carefully read the Act and especially, that part which deals with this particular question and it appears to me that the language used in the Act is unfortunate. That part of Section 9 which deals with this phase of the matter reads as follows:

"Fishing license for non-residents of the State of Florida for the privilege to take fresh water fish in each county thereof, shall be two dollars, but upon payment of the sum

of five dollars, such non-resident shall receive a license entitling him to take fresh water fish in all the counties of this State. Such licenses shall be issued by the several County Judges of this State, who shall collect at the time of their issuance thereof, a fee of twenty-five cents for their services in so doing; none of the provisions of this Act as to licensing shall apply to children under the age of thirteen years."

The construction of this is that if a non-resident wishes to procure a State license he may do so by paying a fee of \$5.00, plus a fee of 25c for the issuance of same, but if he only wishes to procure license to fish in one County, then he is required to pay only the license tax which is applicable to that County. If the County has no Special License Law for fishing therein, he pays the \$2.00 plus the fee of 25c, which is required under the Chapter above referred to. But if the non-resident desires to fish only in a County where a local fishing law obtains, then he will be required to pay only that license which is required under the local fishing license law obtaining in that County.

I fully realize that these unfortunate provisions of the statute will work a great hardship on your Department and the fact is that part of every local Fish and Game Law which prescribes and directs the disposition of it should be immediately repealed. The protecting features of local Acts might well remain in force and be enforceable through your Department but it is unreasonable to expect your Department to pay the salaries and expenses of men to enforce the law in Counties from which no revenue can come into the Department to help defray its expenses.

I believe if you will take this matter up with members of the Legislature that a Bill can easily be passed at the Special Session which will repeal all of these local license provisions and will put the General Law with reference to licenses in every County alike, thereby placing all Counties



on an equal basis to contribute their pro rata toward the maintenance of the Department.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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FISHING LAWS—LOCAL—COUNTY LINES

August 26, 1925.

*Hon. J. B. Royall,  
State Game Commissioner,  
Tallahashsee, Fla.*

Dear Sir:

Replying to your letter of August 25th I beg to say that in case where a local law prohibits fishing in a particular County the location of the County line would govern as to the territory affected by such local law and, therefore, where a lake is partly in one County and partly in another County it may be unlawful to fish in that lake in one County and not unlawful to fish in that part of the lake in the other County.

If the waters of the lake constitute the boundary line of a County in which it is not unlawful to fish but all the waters of the lake are within a County in which it is unlawful to fish, then one would not have the right to fish in that part of the lake bordering on that County in which fishing is not prohibited.

Yours very truly,

RIVERS BUFORD,

Attorney General.

## IMPORTED GAME—SALE OF

January 16, 1926.

*Hon. J. B. Royall,  
State Game Commissioner,  
Tallahassee, Florida.*

Dear Sir:

Your favor of January 4th, with attached correspondence from various persons and firms with reference to the sale in Florida of imported game, has been considered by me.

The Game Laws of Florida were enacted to protect Florida Game. Section 5791 of the Revised General Statutes provides:

“Any person, firm or corporation who, at any time of the year, shall barter, sell or offer for sale any of the game birds or animals protected by this act, either under the name used herein, or under any other name or guise whatsoever, whether lawfully or unlawfully taken, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than twenty-five dollars for each offense.”

You will note that this statute only makes it a misdemeanor to sell or offer for sale birds or animals protected by the Act. The Florida Game Laws were not enacted for the purpose of protecting imported game and this prohibition only applies to Florida game.

I think any hotels or restaurants serving imported game should designate on their bill of fare that same is imported.

I am returning to you the correspondence submitted with your letter.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## DEER—POSSESSION OF

March 3, 1926.

*Hon. J. B. Royall,  
State Game Commissioner,  
Tallahassee, Florida.*

Dear Mr. Royall:

Replying to your letter of March 2, 1926, I beg to advise that I know of no law that would give to any person or persons, firm or corporation, the right to have in his, her, their or its possession any wild deer in the State of Florida.

Section 5775 of the Revised General Statutes of Florida prohibits such possession and I know of no statute making an exception thereto. It seems to me that the question would depend on whether the deer had ceased to be wild, the statute only prohibiting the possession of wild deer.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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DEER AND TURKEY—HUNTING OF

March 26, 1926.

*Hon. J. B. Royall,  
Game & Fish Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Under the provisions of Chapter 9411 the open season for hunting deer and turkey in the counties of Lee, Collier and Hendry was fixed from December 20th to January 31st. This Chapter does not have reference to any game except deer and turkey. Unless there is some other special act to the contrary all game outside of deer and turkey would come under the provisions of the general game law.

By Chapter 10410, Acts of 1925, it is provided that wild deer and turkey should not be hunted, etc., after July 1st., 1925 to and including July 1st., 1928. Under the provisions of this Act there will be no open season for deer and turkey until after July 1st 1928. All other game in said counties come under the provisions of the general game law, unless there is some special act of which I am not advised.

The proceeds from hunting licenses in Lee and Collier Counties should be accounted for and paid over to you in the same manner that the proceeds from hunting licenses are paid to you in other counties.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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FISHING LICENSES—FRESH AND SALT WATER—  
DEPOSIT OF FEES

October 26, 1925.

*Hon. J. B. Royall,  
State Game Commissioner,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 24th I beg to say:

It is my opinion that Chapter 10133, Laws of Florida, Acts of 1925, has the effect of superseding that part of Section 10 of an Act regulating the taking of fish in the fresh and salt waters of the Counties of Escambia, Santa Rosa, Okaloosa and Walton, in the State of Florida, and to provide for the licensing of Sport Fishermen in said Counties, etc., in so far as the same applies to the proceeds derived from the issuance of licenses for fresh water fishing. The Spec-

ial Act provides that the proceeds derived from the issuance of the licenses shall be remitted monthly by the County Judges and shall be deposited in the State Treasury to the Shell Fish Fund and shall be used solely for the enforcement of the provisions of the Act by the Shell Fish Commissioner. This Act was passed assuming that the enforcement of the law would be under the supervision of the Shell Fish Commissioner, but when the law became effective creating the position of State Game Commissioner and placing the enforcement of all laws in regard to fresh water fishing under the supervision of the State Game Commissioner, then it follows that the funds derived from the enforcement of the laws under that department should inure to the benefit of that department. In other words, the State Game Commissioner in so far as the enforcement of the fresh water fish law is concerned stands in lieu of and in place of the Shell Fish Commissioner, as contemplated by this Special Act.

Therefore, the funds derived from licenses issued for salt water fishing should be transmitted to the State Treasurer and should be credited to the fund of the Shell Fish Commission while the funds derived from the licenses for fresh water fishing should be transmitted to the State Treasurer and credited to the State Game Fund.

Yours very truly,

RIVERS BUFORD,

• Attorney General.



DRUG STORES, SODA FOUNTAINS, ETC., SELLING  
LUNCHES AND SANDWICHES

March 22, 1926.

*Hon. Jerry W. Carter,  
Hotel Commissioner,  
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your favor of March 13th, in which you request that I render you an official opinion as to

“whether or not a place of business or structure operated under the name of a news stand, cigar store, pool room, soda fountain, drug store, or soft drink stand, selling lunches, such as sandwiches, cakes, pies and other lunches, whether wrapped or unwrapped, comes under the jurisdiction of this Department and is subject to its regulations as one of those places of business defined in Section 2125 of the Revised General Statutes.\*\*\*”

As to whether one of these places of business could be held to be a restaurant and coming under the jurisdiction of your Department would depend a good deal upon the facts in the particular case. Attorney General T. F. West, when Attorney General of Florida, rendered an opinion to your predecessor under date of October 26, 1915. I am unable to add anything to the opinion of Attorney General West.

So far as this office is concerned, the question raised by you has become a judicial question, should anyone desire to test it in any court of this State.

Yours very truly,

J. B. JOHNSON,

Attorney General.

## U. S. POSTAL DEPOSITS—IN BANKS—INSOLVENT

July 23, 1926.

*Hon. Francis L. Poor,  
Assistant U. S. Attorney,  
Jacksonville, Florida*

Dear Sir:

Your favor of the 21st inst., with reference to preference claims for postal deposits in insolvent banks, has been received.

Under the laws, I do not think these deposits are entitled to a preference. I came to this conclusion being fully conversant with the terms and provisions of Section 3466, Revised Statutes of the United States. This Preference Act was passed March 3, 1797 and amended March 2, 1799. In construing this Act with reference to National Banks the Supreme Court of the United States in the case of *COOK COUNTY NATIONAL BANK vs. UNITED STATES*, 107 U. S. 445, 27 L. ed. 537, held:

“\*\*\*\*\*The provisions of this section and the provisions of the National Bank Law, being, as apply to demands against national banks, inconsistent and repugnant, the former law must yield to the latter, and is, to the extent of the repugnancy, superseded by it; hence the provisions of the national banking Act protecting the United States are requiring National banks to deposit satisfactory security, withdraws national banks, which have failed from that class of insolvent persons, out of whose estates demands of the United States are under this section to be paid in preference to the claims of other creditors.”

Section 3847, Revised Statutes, passed March 3rd, 1873, amended May 27, 1908, is subsequent to Section 3466 above cited. This section 3847, Revised General Statutes,

provided that postmasters may make deposits of postal funds in banks at their own risk.

As I see it, if these funds are given a preference then they are not deposited at the postmaster's risk but are deposited at the risk of the bank and general creditors of the bank. I am not advised of any holding by the courts of the United States specifically covering this particular question. If the National Banking Act took the national banks from under the provisions of this Preference Section then it seems to me that deposits in State banks at the risk of the postmaster are taken from under the provisions of this preference section. U. S. depositories generally are required to give bonds and securities for the U. S. deposits, as was held in the National Bank case above cited. I feel that under the circumstances this question should be decided by a court.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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## NURSES—QUALIFICATIONS

October 12, 1925.

*Mrs. Louise B. Benham, Sec.-Treas.,  
Florida State Board of Examiners of Nurses,  
Hawthorne, Florida.*

Dear Mrs. Benham:

Replying to your letter of this date in which you refer to certain correspondence had with officials of St. Vincents Hospital, Jacksonville, Florida, and yourself in regard to the registration of Sister Genevieve, a nurse in that Hospital holding the position of Supervisor of Nursing Hall, and in which correspondence it is contended by officials of the Hospital that this nurse is exempt from the operation of the law governing registration of nurses in Florida, under the

provisions of Section 11 of Chapter 7831, Laws of Florida, Acts of 1919. I beg to say:

It is my opinion that Section 11 of the Act referred to does not apply to any one who assumes to be a trained nurse. That Section reads as follows: "That this Act shall not be construed to affect or apply to the gratuitous nursing of the sick by friends or members of the family, and also it shall not apply to any person nursing the sick for hire, but who does not in any way assume to be a trained nurse."

The use of the commas as they appear in this Section makes the necessary construction the same as if the words "but who does not in any way assume to be a trained nurse" had been used immediately following the word "family" without the use of the comma and had then been repeated after the word "hire."

It is immaterial so far as your Board is concerned and so far as the requirement of registration is concerned, whether a nurse engaged in the regular practice of nursing receives compensation for her services or performs the services under the auspices of some organization without direct compensation for the Acts of service rendered.

Certainly your Board would not be justified in admitting to examination applicants for registration who have taken their training under a non-registered nurse.

Yours very truly,

RIVERS BUFORD,

Attorney General.

## PHYSICIANS—ISSUANCE OF TEMPORARY CERTIFICATE

November 17, 1925

*Dr. W. M. Rowlett, Secretary-Treasurer,  
State Board of Medical Examiners,  
Tampa, Florida.*

Dear Doctor:

I am in receipt of your good letter of November 14th and have received also the letter referred to under date of November 11th.

I am glad I did not reply to the first communication before receiving your letter of the 14th instant.

I see no serious objection to be raised by the Faculty or by Dr. Sharpe to carrying out the suggestion made in your letter provided, of course, that there is no complaint made against Dr. Sharpe on account of the condition which must exist.

Your letter of the 14th instant is written in such a splendid spirit that I dislike very much to appear to take issue with you in the matter, but it does seem that it will be somewhat a better policy if, in this case and in any other like case which might arise, you would exercise the authority and comply with the spirit of the law as contained in Section 8 of Chapter 8415, Acts of 1921, by procuring the approval of the President of the Board of Medical Examiners and issuing a Temporary License. It seems to me this would not set a troublesome precedent but rather would have the effect of being helpful to you in that, exercising the discretion with which you are charged by the statute, you would assume to grant a temporary certificate under a certain condition, to-wit: That the applicant is employed by a Public Institution in the capacity of a Resident Physician, not assuming to perform any operations and not assuming to do any outside practice or any practice for compensation outside of the fixed salary. There could be a very few of such applicants and by pur-



suing this course you would place those applicants in the position to perform the services required of them without indulging in a technical violation of the law.

I feel sure if I could talk this matter over with the members of your Board, (most of whom are my personal friends but who would not be influenced by this personal friendship) they would agree with the view which I here express in regard to the matter and I hope upon further consideration you may arrive at the conclusion that this is the better course to pursue.

It would be very embarrassing to Dr. Sharpe, who is a person of very high type, if some little 2 x 4 Whipper Snapper should see fit to adversely criticize her for assuming to perform the duties of Resident Physician at the College without having procured even a Temporary Certificate.

I feel sure after due consideration you will pursue such course as you deem to be to the best interest of the profession and of the State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

#### OPTOMETRICIANS—QUALIFICATIONS

April 2, 1926

*Dr. W. F. Davey, Sec.,  
Florida State Board of Examiners in Optometry,  
Daytona Beach, Florida*

Dear Sir:

Your favor of March 31st., with reference to the right of the State Board of Examiners in Optometry to examine one C. A. Brand of Miami, has been received.

Paragraph 2 of Section 6 of the Law provides that no

one shall be eligible for examination who has not graduated from a school of optometry, having a minimum requirement of an attendance course of study of 1000 hours and has been in attendance at such school of optometry for a period of eight months. You would not have a right to over-ride this provision of law in any rules or regulations that you might make.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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May 31, 1926

*Dr. W. F. Davey, Sec.-Treas.,  
Florida State Board of Examiners in Optometry,  
Daytona Beach, Florida.*

Dear Sir:

Your letter of May 27th, addressed to the Attorney General, has been received, in which you asked for information regarding contemplated action against your Board by one Ernest Andrew Edwards of Lake City, Florida.

Section 2197 of the Revised General Statutes of Florida provides that:

"No person shall practice optometry unless such person\*\*\*shall have passed an examination before said Board of Examiners as provided in Section 2196."

The one exception to this requirement is contained in Section 2199, which provides:

"All persons who may have been granted a certificate of graduation, or diploma, indicating competency of the holder to engage in the practice of optometry by any well recognized school, college or institute wherein instructions in the essentials of

optometry may have been taught and who may have been engaged in the practice of optometry in the State of Florida for a period of two years prior to the 21st day of May, 1909, are exempt from examination herein provided for\*\*\*provided the application for such certificate be made in writing within six months from the 21st day of May, 1909, and if not so made all right to a certificate under this Section is waived and the same shall issue only after successfully passing the examination and paying fee as provided in Section 2197."

The provisions of the above quoted section are clear and seem to need no explanation or interpretation as to their meaning or application. If this party made his application within six months from May 21st, 1909 and brought himself within the provisions of said Section 2199, entitling him to a certificate without examination then and in this case only would he be entitled to his certificate without examination.

Respectfully submitted,

H. E. CARTER,

Assistant Attorney General

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OPTOMETRY BOARD—ATTORNEY MAY BE EMPLOYED.

June 5, 1926

*Mr. W. F. Davey, Secretary,  
Board Examiners Optometry,  
Daytona, Fla.*

Dear Sir:

Section 2200 Revised General Statutes of Florida, among other things, provides—

"All moneys received by said Board of Examiners under the provisions of this Chapter shall be held

by the Secretary as a special fund out of which may be paid the per diem allowance, mileage of members, salaries of the President and Secretary, attorney fees, and the expenses incurred by said Board in carrying out the provisions of this Chapter."

Under the above quoted provision of the Statute, it would, in my opinion, be permissible for your Board to employ an attorney to represent your Board in any suit brought against it, and to pay for the services of such attorney out of the funds in the hands of your Secretary.

In event of prosecution of any party for a criminal violation of the Optometry Law, the prosecuting attorney of the County would, in the discharge of his duties, represent the State.

Yours very truly,

H. E. CARTER,  
Assistant Attorney General

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LIVE STOCK SANITARY BOARD—SALARIES—PAY-  
MENT OF TO EMPLOYEES

April 26, 1926

*Dr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of April 24th requesting that I advise you if salaries can be paid as set forth in the resolutions passed by your Board, which resolution is copied in your letter as follows:

"Moved by Mr. Pennock, seconded by Mr. Rozier and unanimously carried, that salary requisitions of all regularly employed inspectors and range riders of the State Live

Stock Sanitary Board are hereby authorized to be paid by State Warrant on the first day of each month, for the preceding month's service, upon approval by the Chairman and Secretary of said Board."

Section 10 of Chapter 9201, Laws of Florida, Acts of 1923, provides that your Board shall have the power to select, appoint, commission and employ competent persons in any County, or Zone, in the State of Florida, to be known as Live Stock Inspectors, and to employ laborers, agents and representatives, as the said Board may determine, and fix the terms of their employment and their compensation, etc. There is no provision in this particular section, nor in the entire chapter, as to when such salary or salaries shall be paid. Section 16 of the above mentioned Act provides that upon presentation to the Comptroller of any accounts duly approved by the said Live Stock Sanitary Board, accompanied by such itemized vouchers as shall be required by him, the Comptroller is authorized and required to audit the same and draw a warrant on the State Treasurer for the amount for which the account is audited, etc.

If the inspectors and range riders of the said Live Stock Sanitary Board are regularly employed as such, as provided by said Act, upon a monthly salary basis then requisition for their salaries should be made up during the month in which the service is being rendered and approved by the Live Stock Sanitary Board as provided in Section 16 of said Act, and presented to the Comptroller on the first day of the month following the month in which such service, or services, are rendered, and by the Comptroller paid upon presentation when so approved by the Live Stock Sanitary Board.

Of course, the salary requisitions would be subject to change in case the services of any of such inspectors or range riders should be discontinued during the month. Otherwise, there is no reason in law why their salaries should not be paid



on the first of each month following the month in which such services are rendered.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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LIVE STOCK SANITARY BOARD—SALARIES—PAY-  
MENT OF TO EMPLOYEES

April 26, 1926.

*Dr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

I have your letter of April 24th requesting that I advise you if salaries can be paid as set forth in the resolution passed by your Board, which resolution is copied in your letter as follows:

“Moved by Mr. Pennock, seconded by Mr. Rozier and unanimously carried, that salary requisitions of all regularly employed inspectors and range riders of the State Live Stock Sanitary Board are hereby authorized to be paid by State Warrant on the first day of each month, for the preceding month’s service, upon approval by the Chairman and Secretary of said Board.”

Section 10 of Chapter 9201 Laws of Florida, Acts of 1923, provides that your Board shall have the power to select, appoint, commission and employ competent persons in any County, or Zone, in the State of Florida, to be known as Live Stock Inspectors, and to employ laborers, agents and representatives, as the said Board may determine, and fix

the terms of their employment and their compensation, etc. There is no provision in this particular section, nor in the entire chapter, as to when such salary or salaries shall be paid.

Section 16 of the above mentioned Act provides that upon presentation to the Comptroller of any accounts duly approved by the said Live Stock Sanitary Board, accompanied by such itemized vouchers as shall be required by him, the Comptroller is authorized and required to audit the same and draw a warrant on the State Treasurer for the amount for which the account is audited, etc.

If the inspectors and range riders of the said Live Stock Sanitary Board are regularly employed as such, as provided by said Act, upon a monthly salary basis then requisition for their salaries should be made up during the month in which the service is being rendered and approved by the Live Stock Sanitary Board as provided in Section 16 of said Act, and presented to the Comptroller on the first day of the month following the month in which such service, or services, are rendered, and by the Comptroller paid upon presentation when so approved by the Live Stock Sanitary Board.

Of course, these salary requisitions would be subject to change in case the services of any of such inspectors or range riders should be discontinued during the month. Otherwise, there is no reason in law why their salaries should not be paid on the first of each month following the month in which such services are rendered.

Yours very truly,

H. E. CARTER,  
Assistant Attorney General.

LIVE STOCK SANITARY BOARD ARBITRATION—  
TIME LIMIT

April 28, 1926.

*Dr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 24th in which you ask to be advised whether or not there is any time limit governing the matter of when arbitration may be entered into between your Board and cattle owners for the settlement of claims growing out of dipping cattle, I beg leave to advise that the statute creating your Board and providing for arbitration does not fix any limit of time as to when such arbitration may be demanded.

It is my opinion that the parties are bound by the general provisions of law applicable to actions upon liabilities created by statute other than a penalty or forfeiture and that the time limit would be three years.

I refer you to Paragraph 5 of Section 2939 of the Revised General Statutes of Florida. Under the provisions of this statute the owner would have three years within which to bring suit to enforce his claim either by suit or arbitration. Therefore, it is my opinion that the parties referred to in your said letter are within their rights in demanding arbitration and that same should be granted.

Yours very truly,

H. E. CARTER,  
Assistant Attorney General.

April 28, 1926

*Mr. J. V. Knapp,  
State Veterinarian,  
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 24th in which you ask to be advised whether or not there is any time limit governing the matter of when arbitration may be entered into between your Board and cattle owners for the settlement of claims growing out of dipping cattle, I beg leave to advise that the statute creating your Board and providing for arbitration does not fix any limit of time as to when such arbitration may be demanded.

It is my opinion that the parties are bound by the general provisions of law applicable to actions upon liabilities created by statute, other than a penalty or forfeiture, and that the time limit would be three years.

I refer you to Paragraph 5 of Section 2939 of the Revised General Statute of Florida. Under the provisions of this statute the owner would have three years within which to bring suit to enforce his claim either by suit or arbitration. Therefore, it is my opinion that the parties referred to in your said letter are within their rights in demanding arbitration and that same should be granted.

Yours very truly,

J. B. JOHNSON,

Attorney General.

## VETERINARIAN—QUALIFICATIONS

May 28, 1926

*Dr. A. L. Shealy, Sec.-Treasurer,  
Board of Veterinary Examiners,  
University of Florida,  
Gainesville, Florida.*

Dear Doctor:

Your favor of the 27th inst., with reference to Board of Veterinary Examiners, has been received.

It is my understanding of this law that all applicants for a license, whether they be graduates of veterinary schools or not, should stand the examination under the rules and regulations prescribed by the Board.

Of course, the provisions of this law were not intended to shut out bona fide veterinary surgeons practicing in Florida prior to April 1, 1925. Veterinarians who were practicing in the State prior to that time, who have within six months from the passage of the Act applied to the Board and secured a license are not subject to examination but when they failed to do this I am of the opinion they are subject to an examination the same as other applicants.

I think the Board's interpretation of the Act is correct.

Very truly yours,

J. B. JOHNSON,

Attorney-General



# INTEREST—RATE TO BE CHARGED ON TAX SALE CERTIFICATES

April 23, 1926

*Hon. Gordon B. Langford,  
Deputy Clerk  
Board of Hardee County Commissioners,  
Wauchula, Florida.*

Dear Mr. Langford:

Replying to your letter of the 21st inst., relative to the rate of interest to be charged under Section 778, Revised General Statutes of 1920, permit me to say that it is my opinion that under this Section you should charge a flat rate of 8 per cent. This does not mean 8 per cent. per annum but 8 per cent. upon the aggregate or 8 per cent. plus on the total amount due the owner on the tax sale certificate.

Trusting that this information will be of value to you, and with kindest regards to you and to Mr. Conroy, I am,

Very truly yours,

ROY CAMPBELL,

Assistant Attorney General

## TAX EQUALIZATION—AUTHORITY OF COUNTY COM- MISSIONERS

June 28, 1926

*W. R. Hardee, Esq.,  
St. Lucie County Commissioner,  
Fort Pierce, Florida.*

Dear Sir:

Your favor of the 25th inst., has been received.

The law gives to the County Commissioners the right to equalize taxes in each County. They can raise or lower the values fixed by the Tax Assessor without regard as to

whether it will raise or lower the total assessment. The statute does not provide that the total assessment shall remain the same. The Tax Assessor is not supposed to run out the totals until after the books have been equalized. For this purpose, the total assessment could be raised or lowered as the facts warranted.

Very truly yours,

J. B. JOHNSON,

Attorney General

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COUNTY COMMISSIONERS—WHEN OFFICE VACANT

November 8, 1926

*Hon. J. T. Swinney, Chairman,  
Board of County Commissioners,  
Punta Gorda, Florida.*

Dear Sir:

Your favor of the 5th inst., has been received.

Under the law it is necessary for a County Commissioner to be a resident of his Commissioner's District. If he moves his residence from the district after he has been elected, under the law the office becomes vacant.

Very truly yours,

J. B. JOHNSON,

Attorney General

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COUNTY COMMISSIONERS—AUTHORIZED TO REQUIRE BONDS

October 13, 1926

*Howard V. Lee, Esq.,  
Marion County Bond Trustee,  
Eastlake, Florida.*

Dear Sir:

Your favor of the 11th inst., with reference to security

for county funds to be taken by the Trustees, has been received.

Section 1544, Revised General Statutes, provides that the County Commissioners shall require good and sufficient bonds from the Trustees conditioned on the faithful discharge of the trust confided to them and that they shall pay over and duly account for all such sums of money as may come into their hands by virtue of such trust.

Bonds are to be approved as to form and sufficiency by the Board of County Commissioners.

It is up to the Trustees to then secure themselves from default of banks or depositories where the funds are deposited. The Trustee's bonds to the Chairman of the Board of County Commissioners is the county security for these funds. The law requires county officials to secure county deposits from banks. It provides that these deposits can be secured by a surety bond issued by some company until authorized to do business in this State or the depository banks can deposit to the credit of the County official State, County or Municipal bonds in an amount to be determined by each of said Boards respectively and approved both as to amount and validity by the Comptroller of the State.

You are correct in the assumption that county deposits should be secured by a surety bond or by Government, State, County or Municipal bonds.

Very truly yours,

J. B. JOHNSON,

Attorney General

BOND TRUSTEES—DUTIES OF IN VALIDATING  
BONDS

November 5, 1926

*Hon. A. G. Paul, Sec.,  
The Bond Trustees of Columbia County,  
Lake City, Florida.*

Dear Sir:-

I am in receipt of your favor of November 4th as follows:

"1. Should the Board of Bond Trustees or should the County Commissioners pay the fees and expenses in connection with validating this issue of bonds?

"2. Should the Board of Bond Trustees or Board of County Commissioners provide for the interest and sinking fund in connection with this bond issue?

"3. Supplementing question No. 2, does the Board of County Commissioners turn over to the Bond Trustees the funds received from the State in connection with the gasoline tax to be used for the purpose of paying interest and establishing a sinking fund, or, should the Board of County Commissioners do this?"

Answering your first question, it is my opinion that the Bond Trustees should pay the fees and expenses in connection with the validation of said bonds.

Answering your second question, it appears that Section 3 of Chapter 11459, Acts of the Special Session of 1925, provides that the Board of County Commissioners shall set aside a sum sufficient to meet interest and sinking fund from the gasoline tax coming to the County.

Answering your third question, it is my opinion that an amount sufficient to meet the interest and to provide a sink-

ing fund should be turned over to the Trustees.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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SPECIAL TAX SCHOOL DISTRICTS—PROCEEDINGS  
IN CONSOLIDATION OF

December 31, 1925.

*Mr. H. L. Merritt, Chairman,  
Board of Trustees of the  
Hinson Special Tax School District,  
Hinson, Florida.*

Dear Sir:

Your favor of the 30th inst., with reference to the consolidation of Special Tax School Districts, received.

Answering your first question: Only those qualified electors paying taxes on real and personal property in the district, who reside in the district, should be allowed to vote. When anyone permanently moves his residence from any district or county he loses his right to vote therein.

Answering your second question: If the property, real or personal, is in the husband's name he alone would be entitled to vote. If the property, real and personal, is in the wife's name only, she alone would be allowed to vote.

Answering your third question: The registration books are not open for the purpose of allowing registration for elections of this kind. The registration officer is required to furnish a list of the qualified electors in the district.

Answering your fourth question: It is my opinion that voters can get transfer certificates from one precinct in a county at any time. I would not state this, though, positively.

Answering your fifth question: Only those who pay taxes on real or personal property in the district are allowed to vote in such elections.



Answering your sixth question: Where one votes against the consolidation but votes for trustees, the vote should be counted against consolidation and should be counted for the Trustees for whom the voter voted.

Answering your seventh question: Persons who reside outside the district but pay taxes on property within the district are not entitled to vote in such an election.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SPECIAL TAX SCHOOL DISTRICT—BONDS—  
ISSUANCE

April 14, 1926.

*Hon. E. R. L. Moore,  
Carrabelle, Florida.*

Dear Sir:

Your favor of the 13th inst., with reference to bond issue for Special Tax School District, has been received.

It is the duty of the County Board of Public Instruction under Sections 589 and 590, Revised General Statutes, to have the building constructed. The Trustees of the School District are the only bond trustees that I know of. The County Board of Public Instruction has the control and supervision of the proceeds from the sale of the bonds, construction of the building and the care of the sinking fund, all of which you will find under the Sections of the Statutes above quoted.

The Trustees of the District usually collaborate and advise with the County School Board as to the building, etc.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

SHERIFFS—DUTY TO ATTEND MEETING BOARD OF  
COUNTY COMMISSIONERS—COMPENSATION  
ALLOWED

January 24, 1925.

*Hon. Claud Connor,  
Clerk Circuit Court,  
Inverness, Fla.*

Dear Sir:

I have your letter of January 22nd and also a like letter of even date which you addressed to Hon. H. Clay Crawford, Secretary of State, which has been transmitted to this office for reply.

Section 1807, Revised General Statutes of Florida, makes it the duty of the Sheriff to attend meetings of the Board of County Commissioners and it is, therefore, his duty to be present at all meetings of such board. The same Section of the statute provides he shall receive such compensation out of the County Treasury as the Board of County Commissioners shall deem proper.

Yours very truly,

RIVERS BUFORD,

Attorney General.

GAME WARDEN—APPOINTMENT OF BY GOVERNOR

March 16, 1925.

*Hon. J. A. Peacock,  
Clerk Circuit Court,  
Blountstown, Fla.*

Dear Sir:

Section 14 of Article XVI of the Constitution of the State of Florida controls the matter which is the subject of your letter of March 13th.

There can be no question but that the Game Warden appointed by the Governor for a term ending on Tuesday after the first Monday in January, 1925, continues to hold the office until his successor is appointed and qualified.

It is not within the province of the Board of County Commissioners to recommend to the Governor who shall be appointed, but the Governor is not authorized to appoint a Game Warden within the County until the County Commissioners have recommended that a Game Warden be appointed for such County. In other words, the County Commissioners simply determined whether or not a Game Warden is necessary and having determined this fact, it is up to the Governor to determine whom he will appoint.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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DEEDS, RECORDING OF—WHEN REVENUE STAMPS  
NECESSARY

February 1, 1926.

*Hon. N. S. Wainwright,  
Clerk, Circuit Court,  
Moore Haven, Florida.*

Dear Sir:

Your two favors of January 29th received.

Deeds, including quit-claim deeds, where the consideration paid for the land is less than \$100.00 do not require a revenue stamp. If the consideration is more than \$100.00 a revenue stamp of 50c is required and for each \$500 and fraction thereof. Quit-claim deeds carry the same revenue as other deeds. If the exemption of this revenue on deeds has been raised to \$500, I am not advised of the fact.

Where lands are deeded subject to a mortgage out-

standing, the amount of the mortgage is deducted from the purchase price and revenue stamps are only placed for the balance. If the consideration for the land was \$10,000 and there was a \$5,000 mortgage outstanding and assumed by the purchaser, then they would only have to pay revenue on the \$5,000.

You are right in recording agreements and contracts for the sale of lands in the deed records.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

# ELECTORS—PLACE OF RESIDENCE, WHERE MUST REGISTER

May 15, 1926.

*Hon. R. W. Creel,  
Clerk of the Circuit Court,  
Bonifay, Florida.*

Dear Sir:

Your favor of the 14th inst., with reference to residence of voters, has been received.

The law requires that one be registered in the precinct of his permanent residence. If one has a farm partly in two precincts he should register and vote in the precinct in which his residence is located.

Where one moves his place of residence permanently he should be stricken from the registration books by the Board of County Commissioners at the time they are revising the books. One who resides in another State cannot claim his residence in Florida.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## ELECTORS—WHERE REQUIRED TO REGISTER

May 13, 1926.

*Hon. L. L. Parraro, Clerk,  
Wakulla County Circuit Court,  
Crawfordville, Florida.*

Dear Sir:

Your favor of the 12th inst., has been received.

The law requires electors to register in the precinct of their permanent residence. Usually a man's residence is where his family is and not where he happens to be working. A man's family may be temporarily absent or in some other county or precinct and he would still have a right to claim a certain precinct as his place of permanent residence, if he bona fide expects to live there and bring his family there.

It is not lawful for one to permanently reside in one precinct and register and vote in another precinct. Where an elector moves from a precinct he should secure transfer certificate from the Supervisor of Registration if he moves to a precinct in the same County.

It is the duty of the Board of County Commissioners to revise the registration books and strike therefrom the names of all electors who have died or moved away.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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TAX—COUNTY ROAD, HOW PAID

May 22, 1926.

*Hon. N. S. Wainwright,  
Clerk, Circuit Court,  
Moore Haven, Florida.*

Dear Sir:

Your favor of the 19th inst., with reference to County



road tax collected on property within a municipal corporation and the payment of one-half thereof to the municipality, has been received.

The Tax Collector would not be authorized to pay this amount over to the city or town. A statement should be made up, showing the amount of taxes collected within the municipality and the municipality should then make a demand on the Board of County Commissioners for one-half of this tax. The Board of County Commissioners then issues a County Warrant to the municipality covering this one-half of the tax.

This is the porcedure that has uniformly been followed.

There is returned herewith letter dated May 5th from Mr. Ray C. Hull, Tax Collector at LaBelle.

Very truly yours,

J. B. JOHNSON,

Attorney General

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ELECTION, PRIMARY AND GENERAL—METHOD  
OF ELECTING CONSTABLE

June 14, 1926.

*L. T. Ivey, Esq.,  
Clerk, Circuit Court,  
Green Cove Springs, Fla.*

Dear Sir:

Your favor of the 12th inst., with reference to Constable for the First District, has been received.

The law does not authorize the writing of the names of candidates on ballots used in Primary Elections. At the General Election the names of parties anyone desires to vote for for any particular office can be written on the ballot and the

law provides that a blank line shall be placed on the ballot for this purpose.

Anyone desiring to become a candidate for Constable in the General Election should either get his name printed on the ballot by petition or his friends could write his name and vote for him at the General Election. The County Canvassing Board would not be authorized to certify the name of anyone where he did not qualify and have his name printed on the Primary Ballot.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SHERIFF—CERTAIN EXPENSE, HOW PAID

August 6, 1926.

*Hon. C. L. Barber,  
Clerk, Circuit Court,  
Cross City, Florida.*

Dear Sir:

Your favor of the 3rd inst., with reference to long distance phone calls made by the Sheriff and asking if the same would be proper charges against the County, has been received.

The expenses of the Sheriff's office should be paid out of the fees and commissions received by him. The law never contemplated that his expenses should be paid by the County and the fees and commissions allowed by statute go to him net.

I do not consider 'phone calls would be a proper charge against the County.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## TAX SALE CERTIFICATES—REDEMPTION OF

October 21, 1926.

*Hon. J. C. Geiger,  
Clerk, Circuit Court,  
Bunnell, Florida.*

Dear Sir:

Your favor of the 19th inst., has been received.

Tax sale certificates held by private individuals are to be redeemed according to the provisions of Sections 770 and 778 of the Revised General Statutes.

Section 770 provides that lands can be redeemed in whole or in part by paying the face of the certificate, together with interest thereon at the rate of 25% per annum for the first year and 8% per annum for the time after the first year. Lands can be redeemed at any time before deed is actually issued.

Section 778 provides that where lands are redeemed after notice of application for tax deed has begun to run or has run, together with interest, fees and cost of publication are to be paid also.

In the case mentioned by you, the party applying to redeem should be required to pay this interest, the fees and cost of publication. Otherwise, he is not entitled to make the redemption and the deed should not be issued unless he makes the payments as required by statute.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## COSTS, CLERK CIRCUIT COURT, MAY BE DEMANDED

December 30, 1926.

*Hon. W. T. Oliver,  
Clerk, Circuit Court,  
Punta Gorda, Florida.*

Dear Sir:

Your favor of the 21st to Mr. Leroy Campbell was handed to me by Mr. Campbell with the request that I answer the same.

It will be perfectly proper and legal for you to demand deposits for costs in all civil cases as per your letter. You can also require prepayment of recording fees for recording deeds and other instruments.

It would not be proper for you to require prepayment of costs for filing and recording final decrees in all cases. This would depend entirely upon the provisions of the decree. In a good many instances Circuit Court Judges include in the decree that the same shall become in full force and effect upon costs being paid and the decree recorded. In a great many cases, it would become your duty to record a final decree without demanding payment of costs in advance.

If you require a \$5.00 deposit in chancery cases, this would cover the average run of decrees. If a very complicated suit is filed that will require long decrees you could increase the amount of deposit to cover costs.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

COUNTY COMMISSIONERS—DUTY OF AS TO  
COUNTY DEPOSITS

December 10, 1926.

*Hon. S. T. Dowling,  
Clerk, Circuit Court,  
Lake Butler, Florida.*

Dear Sir:

Your favor of the 8th inst, has been received.

It is the duty of the Board of County Commissioners to take the necessary security from County depositories covering all county funds. It is the duty of the County Board of Public Instruction to take the necessary security from depositories covering all County school funds and Special Tax School District funds. Bond trustees should see that deposits are properly secured.

You will find provisions for this in Section 1560 of the Revised General Statutes.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

SHERIFFS—WHEN SEARCH WARRANTS  
ELIMINATED

January 5, 1925.

*Hon. B. F. Owens,  
County Judge Liberty County,  
Bristol, Fla.*

Dear Sir:

Replying to your letter of January 2nd I beg to say it is my opinion that where a Sheriff makes a lawful arrest of persons for committing a criminal offense is his presence



and finds intoxicating liquor in their possession as a result of making such arrest, the necessity of a search warrant is eliminated and that such persons may lawfully be charged and convicted with the offense of having intoxicating liquors in their possession. And further, if, at the time of the finding of such liquor, such person is then transporting the same from one place to another in the State of Florida in a vehicle, that such vehicle may be confiscated under the statutes of Florida.

Minors arrested for the commission of a felony should, if the evidence is sufficient, be bound over by the Committing Magistrate to await the action of the Court having trial jurisdiction of the cause, and the Magistrate would not have the authority to commit such minors to the State Industrial School to await action of the Court having trial jurisdiction.

Yours very truly,

RIVERS BUFORD,

Attorney General.

#### AUTOMOBILE—LICENSE TAGS—WHEN REVOKED

March 5, 1925.

*Hon. Paul S. Thomson,  
County Judge, Gadsden County,  
Quincy, Fla.*

Dear Judge:

Replying to your letter of March 4th I beg to say it is my opinion the language used in Chapter 9269, Acts of 1923, to-wit: "And his license shall be revoked for a period of six months" means one who has procured a *license tag* to operate an automobile on the public highways of this State and by reason of such license is entitled to use such automobile on the highways of this State and who operates such automobile on the highways of this State, while in an

intoxicating condition shall have his license revoked for a period of six months. That is, for a period of six months after his conviction he may be prevented from using his automobile on the public highways, and should he assume to do so during the period of such revocation he would be amenable to the same penalties as he would be if he used the automobile on the highway without a license.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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JUDGES—COUNTY—COMPENSATION OF

March 5, 1925.

*Hon. R. C. Horne,  
County Judge,  
Moore Haven, Fla.*

Dear Sir:

Replying to your letter of March 2nd, I beg to say it is my opinion the salary of the County Judge as Judge of the County Court as fixed by Section 3335, Revised General Statutes of Florida, is \$300.00 per annum, plus \$1.00 docket fee in civil cases in counties where the population is less than 22,000 people.

I think the County Commissioners may pay the County Judge such reasonable compensation as may be agreed upon for such Judge's services as Judge of the Juvenile Court.

The jurisdiction of the County Judge as a Committing Magistrate is not affected by the creation of a County Court.

As stated above, it is my opinion, you have not exceeded your authority in issuing warrants on complaint filed before you when acting as a Committing Magistrate, but you have exceeded your authority when as County Judge

you assumed to accept a plea and pass sentence upon such charge and warrant because the County Judge's Court has no final trial jurisdiction in your County and final judgment can only lawfully be entered upon a plea to an information duly filed in the County Court as to offenses of which that Court has jurisdiction.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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COUNTY JUDGE—FEES

March 11, 1925.

*Hon. A. R. Campbell,  
County Judge, Walton County,  
DeFuniak Springs, Fla.*

Dear Sir:

Replying to your letter of March 10th I beg to say it is my opinion that affixing seal constitutes a part of the procedure of issuing warrant and, therefore, it is not proper to charge 40c for issuing warrant and 10c additional for affixing seal thereto.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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JUDGES—NOT AUTHORIZED TO SUSPEND  
SENTENCE

March 17, 1925.

*Hon. S. F. J. Trabue,  
County Judge, Charlotte County,  
Punta Gorda, Fla.*

Dear Sir:

Replying to your letter of March 14th I beg to say it

is my opinion when a sentence has been imposed by a Court and the Court has adjourned the Judge of that Court no longer has any control over that sentence. A sentence can not be commuted or changed except by action of the State Board of Pardons.

The Court may suspend a sentence,—that is, postpone the sentencing of a prisoner, but when the sentence is once passed and the Court has adjourned, that Court loses jurisdiction of the matter.

It is also true that the Judge during the term of Court has no authority to impose a sentence and then suspend any part of it. During the term he may modify the sentence thereby entirely nullifying it as first imposed and imposing a new and different sentence, but he can not leave it so a part of his sentence is operative and another part of it unoperative.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

LICENSE—TO WHOM ISSUED

May 28, 1925.

*Hon. H. D. Garrison,  
County Judge Hardee County,  
Wauchula, Fla.*

Dear Sir:

Replying to your letter of May 23rd your first question is:

“Can license be issued to a partnership or is it necessary that each individual member of the firm take out license?”

The answer to the above question depends upon what kind of business the partnership is engaged in. For a mer-

cantile business or for the conducting of any line of trading, except in real estate, the license may be taken in the name of the firm, but where the business is that of buying and selling on commission or the exercise of an agency, or the practice of a profession, license must be taken by each individual.

The answer to the first question answers your second question.

In answer to your third question I beg to say a corporation may take a license out as a real estate broker, but it is then necessary for each person who acts for the corporation, whether an officer or employee, to take license as an agent. Occupation license is not subject to transfer, but a business license may be transferred under the provisions of Section 805, Revised General Statutes of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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**BROKERS, REAL ESTATE—LICENSE REQUIRED**

August 26, 1925.

*Hon. H. D. Garrison,  
County Judge Hardee County,  
Wauchula, Fla.*

Dear Sir:

Replying to your letter of August 24th I beg to say it is my opinion that real estate brokers should pay license in each County in which they establish an office.

It appears that Chapter 10,206, Acts of 1925, provides for the same fees to be paid to Prosecuting Attorneys in County Judges' Courts that are payable to County Prosecuting Attorneys of County Courts. The fees, taxable as costs and payable to the County Prosecuting Attorney, are



\$5.00 for each record of conviction, whether upon plea of guilty or upon trial, and it appears it was the intention of the Legislature to pay compensation to Prosecuting Attorneys in County Judges' Court in the same manner.

I am frank to say I am not positive what is meant by the word "speed trap," but I assume by the use of this language the Legislature meant to prohibit Traffic Officers hiding behind screens, brush, etc., along the highway for the purpose of trapping passers by.

The execution issued on a fine and cost bond must be handled in the same manner that any other execution issued from your Court is handled. There is no difference between an execution of this kind and any other execution issued by the County Judge.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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PROSECUTING ATTORNEYS—FEES ALLOWED

October 13, 1925.

*Hon. A. E. Lawrence,  
County Judge Highlands County,  
Sebring, Fla.*

Dear Sir:

Replying to your letter of October 8th I beg to say:

It appears that Chapter 10,206, Acts of 1925, provides for the same fees to be paid to Prosecuting Attorneys in County Judges' Courts that are payable to County Prosecuting Attorneys of County Courts. The fees, taxable as costs and payable to the County Prosecuting Attorney, are \$5.00 for each record of conviction, whether upon plea of guilty or upon trial, and it appears it was the intention of the

Legislature to pay compensation to Prosecuting Attorneys in County Judges' Courts in the same manner.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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COUNTY JUDGE—CLERKS OF MAY PERFORM  
CERTAIN DUTIES

November 24, 1925.

*Hon. W. A. McLeod,  
County Judge, Santa Rosa County,  
Milton, Florida.*

Dear Sir:

Replying to your inquiry of November 23rd I beg to say it is my opinion that a Clerk of the County Judge may perform non-judicial acts the same as the Judge. They may administer oaths to affidavits, may issue the ordinary warrants and all processes that do not require judicial determination.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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VOTERS—REGISTRATION OF NOT TRANSFERABLE  
ONE COUNTY TO ANOTHER

December 7, 1925.

*Hon. E. C. Lewis, Jr.,  
County Judge Gulf County,  
Wewahitchka, Fla.*

Dear Sir:

Your favor of the 5th instant addressed to Hon. Rivers Buford, Attorney General, with reference to transfer of

registration from one County to another received.

There is no provision in the statute for the transfer of registered voters except from one precinct to another precinct in the same County. Where they hold special elections the registration books are usually opened for the purpose of allowing voters to register. Under the law one has to reside in a County six months before they are citizens of that County qualified to vote.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

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#### LICENSES—HUNTING, FISHING, TO WHOM PAID

January 22, 1926.

*Hon. A. R. Campbell,  
DeFuniak Springs, Fla.*

Dear Judge:

Your favor of the 19th inst., addressed to Governor John W. Martin, with reference to disposition of hunting license fees, received.

Upon the adoption of the Revised General Statutes in 1920, by the provisions of Section 5802 all local game laws were repealed. Under Section 1298 of the Revised General Statutes the County Judges were required to pay the proceeds received from all hunting licenses into the county treasury and same was credited to the school fund of the county.

Under Chapter 9668, Special Acts of 1923, it provides that the fees for trappers' licenses in Walton County, shall be turned over to the Tax Collector and by him credited to the school fund of the county.

By Chapter 10527, Special Acts of 1925, it provides that proceeds from fishing licenses in Walton and other counties as provided for in said Act, shall be deposited in

the State Treasury to the credit of the Shell Fish fund.

I find no local laws for Walton County, directing where proceeds from hunters' licenses should go. Under Section 11 of Chapter 10133 it provides that license fees collected under the provisions of the Act shall be remitted by the several County Judges on the first Tuesday of each month to the State Game Commissioner.

If there is any other local law directing where the hunting license fees should go, I have not been able to find it. Under the law as I find it, you pay into the county treasury the proceeds from trappers' licenses. You pay over to the State Treasury to be credited to the Shell Fish Fund the proceeds from fishing licenses. You remit to the State Game Commissioner the proceeds from hunting licenses.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### SENTENCE—SUSPENSION OF

January 27, 1926.

*Hon. Thomas B. Bird,  
Jefferson County Judge,  
Monticello, Florida.*

Dear Judge Bird:

I am in receipt of your favor of the 26th inst.

In the matter of prosecution for crime, as I understand it, the Courts have the right to suspend the passing of a sentence and in doing so retain jurisdiction of the case but after the Court has passed the sentence under the law it has no right to suspend the execution of the sentence because the execution of the sentence then passes from the Judge to other officials.

I would advise you to read carefully the following

cases for a thorough understanding of this matter:

The case of *ex parte* Ephraim Williams, reported in 26th Florida, page 310, also

The case of *Tanner v. Wiggins*, reported in 54th Florida Reports, page 203, and

The case of the *Order of Elks vs the State of Florida*, reported in 74th Florida, page 498.

In these cases the Supreme Court has pretty clearly defined the authority of the trial court in the matter of suspension of sentence.

With best wishes, I am,

Very truly yours,

J. B. JOHNSON,

Attorney General.

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ESTATE—TO ESCHEAT TO STATE, COURSE TO  
PURSUE

April 21, 1926.

*Miss May Healy,  
Clerk to County Judge,  
West Palm Beach, Florida.*

Dear Madam:

I am in receipt of your favor of the 17th inst, with reference to property of one SOLOMON FOX, deceased, that will possibly escheat to the State.

If no one has qualified as Administrator to take charge of this property, the Sheriff or someone else should qualify or take charge of this estate under the provisions of Sections



3650-5, Revised General Statutes and also under the provisions of Sections 3644-9, Revised General Statutes.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

CANDIDATES—REFUND TO BY COUNTY  
COMMISSIONERS

July 13, 1926.

*Hon. Guy Gillen,  
County Judge,  
Lake City, Florida.*

Dear Judge:

Your favor of the 10th inst., with reference to refunds to candidates by County Commissioners, has been received.

It is my opinion that the County Commissioners should make this refund under any circumstances. The fact that they failed to make refund within the ninety (90) days required in the statute would not relieve them of the duty. If it did, the law could be entirely defeated by the Board refusing to make the refund until after the ninety days has expired.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

COUNTY BOARD PUBLIC INSTRUCTION—CERTAIN  
AUTHORITY GRANTED

October 26, 1926.

*Hon. W. H. Mapoles,  
Okaloosa County Judge,  
Crestview, Florida.*

Dear Judge:

Your favor of the 25th inst., asking my construction of Section 198, General School Laws, the same being Section 568 of the Revised General Statutes, has been received.

There should be an election in Special Tax School Districts every two years for the purpose of fixing the millage and nominating trustees. Under the section cited by you,

the County Board of Public Instruction has authority to fill vacancies occurring in the Board of Trustees for the unexpired term but such vacancies should be filled by the County Board upon nomination by the patrons of the school. The County Board has no authority to fill vacancies except as provided for in this statute.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

# COUNTY JUDGE—COST OF

December 17, 1926.

*Hon. W. A. McLeod,  
Santa Rosa County Judge,*

Dear Judge:

Your favor of the 13th inst., with reference to taxing costs in cases of persons convicted for violation of the prohibition laws, has been received.

As I understand it, these cases were tried before the County Judge and you do not have what is designated as a County Court and regular prosecuting attorney for the same.

The law provides that the County Prosecuting Attorney shall receive \$5.00 for each conviction. If there is no County Prosecuting Attorney then the \$5.00 would not be taxed. I think it was proper to tax the jury fees as they are items of cost provided for by law.

With the Season's greetings, I am,

Very truly yours,

J. B. JOHNSON,  
Attorney General.

LICENSE FEES—FINES—SALT WATER FISH—  
TO WHOM PAID

December 4, 1926.

*Hon. C. R. Melvin,  
Washington County Judge,  
Vernon, Florida.*

My dear Judge:

Your favor of the 3rd inst., inquiring as to what disposition should be made of license fees and fines in a case where parties are convicted for a violation of the salt water fish regulations, has been received.

The fines should be paid into the Fine and Forfeiture Fund of the County and the license fees should be sent to:

Hon. T. R. Hodges,  
Shell Fish Commissioner,  
Tallahassee, Florida.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

WITNESSES—PAYMENT OF

December 11, 1925.

*Mr. Robt. Taylor,  
County Solicitor,  
35 Real Estate Bldg.,  
Miami, Fla.*

Dear Sir:

Your favor of December 3rd addressed to Hon. Rivers Buford is handed to me for attention.

Witnesses summoned by the Prosecuting Attorney out of term time should be paid the same fees as other witness-

es. Pay roll or cost bill should be properly certified to by the County Commissioners for payment.

Yours very truly,

J. B. JOHNSON,

Attorney General.

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BONDS—MUNICIPAL—CLERKS' FEES

August 3, 1926.

*J. R. Durrance & Company,  
Liggett Building,  
Jacksonville, Florida.*

Gentlemen:

Your favor of the 2nd inst., with reference to fees charged by the Clerk of the Circuit Court for signing validation certificates on Bonds, has been received.

I find no definite provision in the law governing fees of the Clerks of the Circuit Court in matters of this kind.

Section 3300, Revised General Statutes, provides that the proper officer shall stamp on said bonds: "Validated and confirmed by decree of the Circuit Court (specifying the date when such decree was rendered and the court in which it was rendered)."

This Section of the Statutes provides that the proper officers of such county, municipality, taxing district or other political district or subdivision shall stamp or write this on the Bond. This section then provides that the Clerk of the Circuit Court shall sign these. The Clerk's fee bill provides "seal affixing to any paper other than those herein specifically mentioned ten cents." It is presumed that the Clerk would not affix his seal to any paper without also placing thereon his signature. For these reasons it is my opinion that ten (10c) cents would be the proper charge for each Bond.



You will appreciate that I am not authorized to render an opinion in this matter and that my opinion is not binding on anyone or on any court. My opinion is though that the Clerk would only be authorized to charge ten (10c) cents for each bond signed.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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COUNTY SUPERINTENDENTS—SALARIES,  
HOW PAID

September 7, 1925.

*Mr. J. K. Musgrove,  
County Superintendent Public Instruction,  
Blountstown, Fla.*

Dear Sir:

Replying to your letter of August 4th, which has just reached this office, I beg to say my opinion, in accord with the decision of the Supreme Court, is that salaries of County Superintendents are payable by the County Commissioners from the General Revenue Fund.

Yours very truly,

RIVERS BUFORD,  
Attorney-General.

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SCHOOLS—LAWS RELATING TO MILLAGE AND  
FREE TEXT BOOKS

January 15, 1926.

*Miss Alice L. Shelbourne,  
Superintendent of Public Instruction,  
Titusville, Florida.*

Dear Madam:

Your favor of the 9th inst., in reference to school mill-

age for your county received.

Paragraph 13 of Section 454 of the Revised General Statutes provides that the County Board of Public Instruction shall make up an estimate of the amount of money required to run the schools and deliver the same to the Tax Assessor, who is required to assess this amount of taxes. The Supreme Court of Florida has held that the County Commissioners are not to reverse the decision of the County Board of Public Instruction as to millage. I would advise you to read this paragraph 13 of the said Section 454 and the citation of decisions thereunder.

As to the Free Textbook Law, Section 18 of this law provides as follows:

“Sec. 18. That for the purpose of creating a special fund to be known as the State Text Book Fund for the purpose of carrying out the provisions of this Act, there shall be levied and collected upon all assessable property in the State of Florida for the year 1925, and for each and every year thereafter, a tax of three-fourths of one mill upon the dollar; provided, that if at any time after the year 1926 the Governor shall discover that the full amount of three-fourths of one mill upon the dollar is not necessary to carry out the provisions of this Act, he is authorized and empowered to cause the millage to be levied for any year for the purpose of carrying out the provisions of this Act to be reduced, such reduction, however, not to be so great as to cause any deficiency to exist in the amount necessary to carry out the provisions of this Act. All taxes herein provided for are to be collected by the State and County Tax Collectors of the various Counties of the State of Florida at the time of collecting other State taxes, and are to be paid into the State Treasury, and so much there-

of as is necessary to carry out the provisions of this Act is hereby appropriated for such purposes."

If these three-fourths ( $\frac{3}{4}$ ) of one mill on the dollar have been levied in the various counties then you will have the funds in hand with which to secure free text books. If for any reason these three-fourths ( $\frac{3}{4}$ ) of a mill were not levied then there will be no funds with which to operate.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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BOARD OF PUBLIC INSTRUCTION—TO ADVERTISE  
FOR BIDS IN CERTAIN CASES

March 4, 1926.

*Hon. P. L. Tippins,  
County Supt. of Public Instruction,  
Green Cove Springs, Florida.*

Dear Sir:

Your favor of March 2nd received.

I do not find any statute requiring the County Board of Public Instruction to advertise for bids for contracts for the construction of school buildings except in the matter of Special Tax School Districts.

The law with reference to Special Tax School Districts is contained in Sections 590 and 591, Revised General Statutes. The law does provide that County Commissioners shall advertise for bids where the cost is over \$300 but this statute does not apply to the School Board.

Very truly yours,

J. B. JOHNSON,

Attorney General.

BOARD OF PUBLIC INSTRUCTION, AUTHORIZED TO  
INVEST SINKING FUND

August 20, 1926.

*Hon. T. W. Lawton,  
Superintendent of Public Instruction,  
Court House,  
Sanford, Fla.*

Dear Sir:

Your favor of the 18th inst., has been received.

The County Board of Public Instruction can invest the sinking fund of a Special Tax School District under the provisions of Section 594, Revised General Statutes. The provisions of the statute should be strictly complied with when such investment is made.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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BOARD OF PUBLIC INSTRUCTION: PURCHASE OF  
SCHOOL SITE

September 16, 1926.

*Mr. J. Y. Register, Chairman,  
Board of Public Instruction,  
Jasper, Fla.*

Dear Sir:

Your favor of thte 14th instant, with reference to purchase of 3 $\frac{1}{2}$  acres of real estate for school site, received.

It is my opinion that the provisions of Section 436, Revised General Statutes governs in instances where the County School Board, or the Special Tax School District, is without funds with which to purchase the necessary real estate for school purposes. This Section is for the purpose

of enabling the County to finance matters of this kind.

Under the ruling of the Supreme Court in the case of Langford v. Odom, 77 Fla. 282, I am of the opinion that your position in this matter is well taken.

If the County Board of Public Instruction has sufficient finances with which to pay cash for school site, I do not think the provisions of Section 436 would apply, and I am quite sure the Supreme Court would so hold.

You will appreciate that the question you have put up to me is purely judicial and will have to be decided by the courts before it is definitely settled. Any opinion I might render would have no more force or effect than the opinion of your own counsel. The courts would not be bound by my opinion either one way or the other, neither would you be authorized to act on my opinion and advice because the law does not make it my duty to render opinions in matters of this kind. Unless the law authorizes me to advise and render opinions, any advice or opinions given by me are without legal force.

With best wishes, I am,

Yours very truly,

J. B. JOHNSON,

Attorney General.

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COUNTY SUPERINTENDENTS—SALARIES PAID

December 1, 1926.

*Hon. Alice L. Shelbourne,  
Brevard County Supt. of  
Public Instruction,  
Titusville, Florida.*

Dear Madam:

Your favor of the 29th ult., has been received.

Section 451 of the Revised General Statutes fixes the amount of compensation or salary to be paid to County



Superintendents. You state that the total annual receipts for Brevard County for the year are \$350,000. Based on this amount, the salary of a County Superintendent will be not less than \$200 per month.

A good many Counties have Special Acts passed, basing the compensation of County Superintendents on population. Where no such Special Acts have been passed for a County the salary is fixed according to the schedule provided in Section 451, Revised General Statutes, above cited.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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SCHOOL BOARD—AUTHORIZED TO BORROW  
MONEY

December 1, 1926.

*Hon. Jesse Montague,  
Citrus County Supt. of Public Instruction,  
Inverness, Florida.*

Dear Sir:

Your favor of November 29th, with reference to the School Board borrowing money, has been received.

Section 458, Revised General Statutes, provides that the County Board of Public Instruction can borrow on the budget estimate in an amount not exceeding 80 per cent. and have a rate of interest not exceeding 8 per cent. If these notes or warrants for borrowing money should be sold, below par, it would make the rate of interest more than 8 per cent per annum and would be in violation of the statute. Under this statute it would be unlawful, either directly or indirectly, to pay a greater rate of interest than 8 per cent per annum.

Very truly yours,

J. B. JOHNSON,

Attorney General.

SCHOOL BOARD—AUTHORIZED TO INVEST  
SINKING FUND

December 3, 1926.

*Hon. C. H. Price,  
Putnam County Supt.  
of Public Instruction,  
Palatka, Florida.*

Dear Sir:

Your favor of the 2nd inst., with reference to school boards investing sinking fund in Special Tax School Districts, has been received.

We refer you to Section 594, Revised General Statutes, which makes this provision:

"The county board of public instruction shall have power at all times to invest the sinking fund collected for the retirement of any bonds of any district in the bonds of another special school tax district of the same county; provided, said bonds shall be purchased at par, and the board shall have further right to invest the sinking fund of any district in any municipal or county bonds of the county under its jurisdiction, provided that the said bonds shall be of such date and maturity that they will mature on or before the date of the maturity of the district's bonds, with whose sinking fund they have been purchased, and provided, further, that it shall be the duty of the county board of public instruction before investing the sinking fund as herein provided to secure the opinion of the Attorney-General of the State of Florida, approving the legality and validity of the bonds to be so purchased, and no bonds shall ever be purchased by any board which have not been entirely and fully approved by the opinion of the Attorney-General

as herein provided; provided, always, that the board shall have the right to keep the sinking fund on deposit earning the rate of interest agreed upon until such time as in their judgment they may be able to invest it in bonds to better advantage as herein provided for."

You will note that the Attorney General has to pass on the legality and validity of any bonds of this character before the Board is authorized to invest in them.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

#### JAILER—RIGHT TO CENSOR PRISONER'S MAIL

April 20, 1925.

*Mr. W. M. Torlay,  
Jailer, Alachua County,  
Gainesville, Fla.*

Dear Sir:

Replying to your letter of April 20th I beg to say:

The jailer or warden of the prison has the right to decline to allow any sealed mail to go from a prisoner to the outside without first having censored such mail. I doubt that the warden has the right to open letters which have been sealed and have been started to the outside post office, but he has the right to intercept such letters and destroy them in the presence of the person attempting to send them. The warden also has the right to open any mail coming into his hands immediately and censor the same before its delivery to a prisoner in his charge.

Yours very truly,

RIVERS BUFORD,  
Attorney-General.

JUSTICE OF THE PEACE—CONSTABLE—WHEN  
ENTITLED TO MILEAGE

February 21, 1925.

*Mr. F. P. Youngblood,  
Constable, 7th District,  
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of February 19th I beg to say it is my opinion you are entitled to mileage for going to and coming from the scene of homicide mentioned in your letter. The Justice of the Peace and jurors are likewise entitled to mileage. The manner of transportation of the jury and Justice of the Peace is a matter between you and them for which the County is not liable.

Yours very truly,

RIVERS BUFORD,  
Attorney-General.

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JUSTICE OF THE PEACE—JURISDICTION—NOT  
AUTHORIZED TO DEMAND COST DEPOSITS  
FOR JURY

June 29, 1925.

*Mr. J. A. Whitley,  
Constable,  
Boca Grande, Fla.*

Dear Sir:

Replying to your letter of June 24th I beg to say a Justice of the Peace Court has no final trial jurisdiction in criminal cases in a County where there is a Criminal Court of Record, or a County Court established.

A Justice of the Peace has no authority to demand cost deposit for a jury in a criminal case. Every defendant is entitled as a matter of right to trial by jury. In the case mentioned in your letter the money deposited should be returned to the defendant.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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CONSTABLES—AUTHORIZED TO SERVE PROCESS—  
MILEAGE ALLOWED

January 15, 1926.

*Mr. W. B. Kersey,  
Constable, Dist. No. 3,  
Pasco County,  
P. O. Box 525,  
Dade City, Fla.*

Dear Sir:

Your favor addressed to the Attorney General with reference to mileage of constables has been received.

Section 2897 of the Revised General Statutes authorizes constables to serve process of County Judges courts and Justices of the Peace courts in any district of the county. You will be entitled to the actual and necessary mileage traveled in serving process anywhere in the county, same fees as sheriff's.

Very truly yours,

J. B. JOHNSON,

Attorney General.



## CONSTABLE'S FEES—HOW PAID

December 9, 1926.

*H. R. Crafton, Esq.,  
Constable,  
Malabar, Florida.*

Dear Sir:

Your favor of the 7th inst., with reference to Constable's fees and method of paying same, has been received.

The County Commissioners should pay your fees direct to you the same as Justice's fees are paid direct to the Justices.

A Constable's fees are to be paid in full except in cases where the defendant is bound over to the Grand Jury and the Justice sits as a committing magistrate and binds defendant over to the Grand Jury or to a higher Court. No Justice fees are paid unless an Information is filed or an Indictment found. If no information is filed or no indictment found the Constable is entitled to his cost for executing the warrant only. You will find this provision in Section 6174, Revised General Statutes.

You will appreciate the fact that I have no authority to advise or adjust your difficulties down there. I have given the advice gratuitously and without authority of law for the sole purpose of trying to assist you to straighten out this tangle.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

INDUSTRIAL SCHOOL—JUSTICE OF THE PEACE  
HAS NO AUTHORITY TO COMMIT A  
DELINQUENT CHILD

July 17, 1925.

*Hon. George Clark,  
Justice of the Peace,  
Punta Gorda, Fla.*

Dear Sir:

A Justice of the Peace has no authority to commit to either of the Industrial Schools, though he may commit a delinquent child to the Probation Officer of the County.

Yours very truly,

RIVERS BUFORD,  
Attorney-General.

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LICENSE TAG—"PRIVATE USE" AND "FOR HIRE"  
CONSTRUED

August 11, 1925.

*Hon. S. C. Council,  
Justice of the Peace,  
Carrabelle, Fla.*

Dear Sir:

The penalty statute referred to in your letter of August 10th is Section 5309, Revised General Statutes of Florida, as amended by Section 13 of Chapter 8410, Acts of 1921.

If a person uses a truck to haul wood which such person sells to consumers, then the truck is not required to have a "For Hire" license tag because of being engaged in such hauling, but if the truck is used to haul wood for pay, that is, to haul wood under a contract or to deliver it for so much per load or cord, or by the day, then a "For Hire" license

tag is required and it is a violation of the law for a person to operate such a truck for hire under the private license tag.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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POLL TAXES—DUTY OF TAX COLLECTOR AS TO

January 18, 1926.

*Mr. W. M. Ventling,  
Justice of the Peace,  
Glen St. Marys, Fla.*

Dear Sir:

Your favor of the 13th inst., with reference to poll taxes, received.

Where one pays taxes on real or personal property the Tax Collector can require that such person pay the poll tax due by him at the time of paying the taxes on the real or personal property. If the wife owns no real or personal property and is not paying any taxes on such property the Tax Collector would not be authorized to hold the husband's property responsible for the wife's poll tax. It is true there is a law forbidding one from paying the poll taxes of another except under certain conditions.

Very truly yours,

J. B. JOHNSON,

Attorney General.

JUSTICE OF THE PEACE—JURISDICTION OF

March 24, 1926.

*W. M. Larkin, Esq.,  
Pasco County Attorney,  
Dade City, Florida.*

Dear Sir:

Your favor of the 22nd inst., has been received.

Justices of the Peace have no criminal jurisdiction in counties where there is a Criminal Court of Record. In counties where there is only a County Court a Justice of the Peace has trial jurisdiction of misdemeanors where the punishment does not exceed \$100 fine or a three months imprisonment or both. You will find this provision in Section 5996, Revised General Statutes.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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TAXES—DRAINAGE—PROCEDURE IF UNPAID

May 17, 1926.

*W. A. Corley, Esq.,  
Justice of the Peace,  
Kellyton, Alabama.*

Dear Sir:

Your favor of the 13th inst., with reference to taxes on Tract 37, Block 75, Palm Beach County, Florida, has been received.

The law requires that taxes be paid when due, including State and county taxes, general drainage taxes, where lands are located within the Everglades Drainage District

and also subdrainage district taxes, where subdrainage districts are created for the purpose of reclaiming definite areas of land.

I note by your letter that you have paid State and County and Everglades Drainage District taxes. If you failed to pay the Lake Worth Drainage District taxes then I am afraid you lost title to the land and your only remedy would be to purchase same from the owner of the Master's Deed.

This office is not authorized to handle matters of this kind. We are not authorized by law to handle the business of private individuals or to render them advice in any matters. If we did so, we would not have time to transact the business of the State.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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LICENSES—FISHING—NON-RESIDENTS

May 20, 1926.

*H. D. Searcy, Esq.,  
Clerk, Circuit Court,  
Dothan, Alabama.*

Dear Sir:

Your favor of May 18th has been received.

Non-residents of the State of Florida are required to pay a County fishing license tax in the sum of \$2.00 in each County, with a fee of 25c to the County Judge issuing such license. Non-residents, by paying a fee of \$5.00 for the right to fish in any of the Counties in the State of Florida license and a fee of 25c to the County Judge can secure the



without paying a County License. This makes a County License \$2.25 and a State License \$5.25. Where one takes a State License he does not have to pay for a County License.

If you have paid any license taxes which were not properly and legally due you have just lost that amount of money.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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OFFICE—WHEN DEEMED VACANT

June 29, 1926.

*Earl L. Woods, Esq.,  
Justice of the Peace,  
Olympia, Florida.*

Dear Sir:

Your favor of the 23rd inst., has been received.

Section 396 of the Revised General Statutes provides that an office shall be deemed vacant when the incumbent

“ceases to be an inhabitant of State, District, County, town or city for which he shall have been elected or appointed.”

If your residence is outside the limits of the Justice’ district, I am afraid that constitutes a vacancy.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

SLOT MACHINES—UNLAWFUL WHEN USED AS  
GAMBLING DEVICES

August 25, 1926.

*B. A. Doerk, Esq.,  
Justice of the Peace,  
Clewiston, Florida.*

Dear Sir:

Your favor of the 23rd inst., with reference to slot machines, has been received.

Any slot machines used as gambling devices violate the gambling laws of the State. The machine described by you, in which coins are deposited and which may or may not return to the player his money is clearly a gambling device.

The law allows licensing of slot machines for the vending of merchandise. Such law is Section 978, Revised General Statutes. The law does not allow the licensing of slot machines to be used as gambling devices.

The statute prescribing the punishment for gambling is Section 5508, Revised General Statutes and the statute with reference to implements, devices or apparatus used for gambling and disposition thereof is Section 5507, Revised General Statutes.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## GARNISHMENT—RIGHTS OF DEFENDANT

August 30, 1926.

*Hon. W. R. Jones,  
Justice of the Peace,  
High Springs, Fla.*

Dear Sir:

Your favor of the 27th inst., asking my construction of Sections 3885 and 3886, Revised General Statutes, has been received.

Under the provisions of these two sections it is my opinion that the Writ of Garnishment can issue and it is optional with the defendant as to whether or not he will take advantage of the fact that he is the head of a family and that funds garnished are due him for personal services and labor. Of course, if you knew of your own personal knowledge that the funds garnished are for personal service and labor and that defendant is the head of a family you could decline to issue writ of garnishment.

You will appreciate that defendant can waive his rights under these statutes.

Very truly yours,

J. B. JOHNSON,

Attorney General.

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CANDIDATES—INDEPENDENT—  
QUALIFICATIONS OF

October 25, 1926.

*Hon. Rogelio Gomez,  
Justice of the Peace,  
Key West, Florida.*

Dear Sir:

Your favor of the 23rd inst., with reference to qualifications of independent candidates, for the General Election, has been received.

This matter is governed by the provisions of Chapter 9293, Acts of 1923. No person who was a candidate or voted in the Primary Election is entitled to have his name printed on the ballot as an independent candidate. The statute on this point reads:

“Any qualified elector who has not participated, as a voter or candidate, in the affairs of a political party, furnishing a nominee, as aforesaid, during its last convention or primary election, shall be entitled to have his or her name printed on said ballots for any office,\*\*\*”

Where such independent candidate is running for State or official office he has to have 25 qualified electors from each county to participate in the election of said county to sign a petition to have his name placed on the ballot. If it is a county or municipal office, he must have at least 25 qualified electors within such county or municipality. Where the independent candidate is running for County Commissioner his petition should be signed by 25 qualified electors of the County. County Commissioners are elected by the County at large.

I think this has answered your questions.

With best wishes, I am,

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### JUSTICE OF THE PEACE—JURISDICTION OF

November 29, 1926.

*Hon. M. R. Cartwright,  
Justice of the Peace,  
Stuart, Florida.*

Dear Sir:

Your favor of the 26th, asking my interpretation of Section 3365, Revised General Statutes, in connection with Section 22 of Article V of the Constitution, has been received.

Of course, it appears from Section 22 of Article V of the Constitution that a Justice of the Peace would have jurisdiction in civil matters where the amount or property sued for was not in excess of \$100. There is a jurisdiction conferred that could not be taken away by statute. We have to consider this in connection with Section 18 of Article V, which authorizes the Legislature to organize County Courts and to confer jurisdiction in all cases at law in which the demand or value of the property involved shall not exceed \$500. This Section 18 does not fix a minimum. Under these provisions, Justices of the Peace in Counties having a County Court only have jurisdiction where the demand or value of the property does not exceed \$50. This is rather a nice question and one that the Supreme Court has not yet passed on, as far as I know.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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ELECTION—GENERAL—VOTERS QUALIFIED

March 13, 1925.

*Hon. M. F. Burghard,  
Supervisor of Registration,  
Quincy, Fla.*

Dear Sir:

Replying to your letter of March 11th I beg to say there is no law authorizing a Supervisor of Registration to transfer names from the Primary Registration Book to the General Election Book. The law does provide that those who are registered in the Primary Registration Book shall



be thereby qualified so far as registration is concerned to vote in a General Election.

Yours very truly,

RIVERS BUFORD,

Attorney General.

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REGISTRATION—BY AFFIDAVIT

October 8, 1925.

*Hon. James Carlton,  
Supervisor of Registration,  
Sebring, Fla.*

Dear Sir:

Replying to your letter of October 5th I beg to say:

The statutes provides that any person may register by filing an affidavit with the Tax Collector *at the time* when such person is paying his or her poll tax. This cannot be done at any other time, but when such affidavits are filed with the Tax Collector at the time the persons desiring to be registered are paying their poll taxes, said Tax Collector should immediately transmit these affidavits to the Supervisor of Registration, and the Supervisor of Registration should thereupon enter the names of such persons on the Registration Rolls and file such affidavits as permanent records in his office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

REGISTRATION—TRANSFER CERTIFICATES TO  
VOTERS

December 8, 1925.

*Mr. J. A. Whitfield,  
Supervisor of Registration,  
Wewahitchka, Fla.*

Dear Sir:

Under the provisions of Section 243, Revised General Statutes of Florida, a Supervisor of Registration is directed to give transfer certificates to voters moving from one voting precinct to another voting precinct in the same county. There is nothing in the law allowing transfer certificates from a precinct in one county to a precinct in another county.

Before one is entitled to register in any county, the law requires that he must reside in the county for six months and in the State for one year.

Unless there has been a Special Act authorizing the opening of the registration books in your County, they cannot be opened except as provided by Section 227 of the Revised General Statutes.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

## VOTERS—LIST OF FURNISHED

January 6, 1926.

*Hon. J. A. Whitfield,  
Supervisor of Registration,  
Wewahitchka, Florida.*

Dear Sir:

Your favor of the 5th inst., received.

It will be your duty to furnish the list of registered voters who are qualified to vote as per the Tax Collector's

list. The Tax Collector is not required to furnish this list until after the time for paying poll taxes has expired.

I call your attention to paragraph No. 6 of Section 215 of the Revised General Statutes, as amended by Chapter 8582, Acts of 1921.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SUPERVISORS OR REGISTRATION—TERM OF  
OFFICE

January 18, 1926.

*J. A. Whitfield, Esq.,  
Supervisor of Registration,  
Wewahitchka, Florida.*

Dear Sir:

Your favor of the 15th inst., with reference to term of office of Supervisor of Registration, received.

The dates in your commission are correct. Supervisors of Registration under Chapter 9271, Acts of 1923, hold office for the period of four (4) years. The office of Supervisor of Registration is not an elective office but is an office filled by appointment by the Governor.

Your commission will hold good for the length of time recited in the commission.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## REGISTRATION—OATH REQUIRED

March 11, 1926.

*J. W. Davis, Esq.,  
Supervisor of Registration,  
Clearwater, Florida.*

Dear Sir:

Your favor of the 9th inst., with reference to persons qualified to register, received.

Anyone who is willing to take the following oath will be entitled to register:

“I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of the State of Florida; that I am twenty-one years of age and have been a resident of the State of Florida for twelve months, and of this county for six months; that I am a citizen of the United States, and that I am qualified to vote under the Constitution and laws of the State of Florida.”

When anyone is willing to take this oath, it is up to you to allow them to register. If they swear falsely they will be subject to criminal prosecution for false swearing.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## REGISTRATION—QUALIFICATION FOR

March 15, 1926.

*J. W. Davis, Esq.,  
Supervisor of Registration,  
Clearwater, Florida.*

Dear Sir:

Your favor of the 13th inst., with reference to qualifications to register, received.

One would not have to be in Florida every day for twelve (12) months and in the County six (6) months, to be entitled to register. They would have to have bona fide established their home and residence in the State of Florida and have been so established for a period of twelve (12) months before they would be entitled to register.

The statute prescribes the oath necessary to be taken upon registration and where one takes that oath it is presumed he has sworn truthfully and therefore entitled to register. If one should swear falsely in order to secure registration he would be subject to criminal prosecution. The law does not make it the duty of the Supervisor of Registration to pass upon the question as to whether or not the oath is true or false. If one applying to register is advised of the oath necessary and of the consequence to him, should he swear falsely that is as far as you would be warranted in going. If you personally know that anyone applying to register is not entitled to register, you might so state it to him and then let him take the consequences.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SUPERVISOR OR REGISTRATION—DUTIES OF

March 18, 1926.

*E. B. Dendy, Esq.,  
Registration Supervisor,  
Port St. Joe, Fla.*

Dear Sir:

Your favor of the 17th inst., with reference to your duty as Registration officer, received.



Anyone who can take the oath required, showing his qualifications to register, will have the right to register before you. You mention the fact that some negroes desire to register. Of course, they can register as Democrats, as Republicans or as belonging to any other political party, under the law.

It will be your duty to register them in a book furnished you by the County Supervisor of Registration.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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REGISTRATION BOOKS—TIME REQUIRED TO BE  
KEPT OPEN

March 25, 1926.

*W. J. Bailey,*  
*Supervisor of Registration,*  
*Titusville, Fla.*

Dear Sir:

The Registration Books should be kept open in each electoral district from the first Monday in March to the first Monday in April. See Section 307 of the Revised General Statutes.

The registration books for the county are to be kept open between the first Monday in April and May 1st. See Section 312 of the Revised General Statutes.

Electors have until the fourth Saturday preceding the day of election in which to pay their poll taxes. This is for general elections. For primary elections they have until

the second Saturday in the month preceding the day of such election.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SUPERVISOR OF REGISTRATION—NOT REQUIRED  
TO STRIKE CERTAIN NAMES FROM BOOKS

April 8, 1926.

*J. A. Whitfield, Esq.,  
Wewahitchka, Florida.  
Supervisor of Registration,*

Dear Sir:

Your favor of the 7th inst., has been received.

It is not the duty of the Supervisor of Registration to revise and strike from the registration books the names of those who have died, moved away or who are improperly registered. This is a duty to be performed by the Board of County Commissioners under the law. Sec. 244, Revised General Statutes.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

REGISTRATION BOOKS—DUTIES OF SUPERVISOR  
OF REGISTRATION; COUNTY COMMISSIONERS;  
TAX COLLECTOR

April 23, 1926.

*J. W. Jones, Esq.,  
County Supervisor of Registration,  
Trenton, Florida.*

Dear Sir:

Your favor of the 21st., has been received.

It is the duty of the County Commissioners to examine and revise registration books of the County, erasing therefrom the names of all such persons as have died or removed from the County or from one district to another in the same County or who are otherwise disqualified to vote and restoring such names as have been improperly taken off. You will find this provision in Section 244 of the Revised General Statutes.

Section 246 provides that the Supervisor of Registration shall note on the registration books the names of all persons registered therein who shall have paid their poll taxes on or before the second Saturday of the month immediately preceding the day of election.

Section 248 requires that the Tax Collector make a list of those who have paid their poll taxes and are qualified to vote. We believe you will find all the information desired in the Sections cited.

You will note that it is the duty of the Tax Collector to furnish to you a list alphabetically arranged of all who have paid their poll taxes. It will then be your duty to note the same on the registration books to be furnished the inspectors of each precinct.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## VOTER—QUALIFICATION OF

May 3, 1926.

*J. A. Whitfield, Esq.,  
Supervisor of Registration,  
Wewahitchka, Florida.*

Dear Sir:

Your favor of May 1st has been received.

Persons who have been in the State for twelve (12) months and county for six (6) months will be entitled to register and vote provided they have paid all poll taxes legally assessed against them. They would be required to pay one year's poll taxes in Florida, and, according to the provisions of Chapter 8583, Acts of 1921, show poll tax receipt from the state from which they came covering one year. The statute on this question provides:

“that no person who has not been in this State one year previous to any general election shall be required to pay more than one year's poll taxes. Provided, that any person who has only been a resident of this State one year must first produce a poll tax receipt from the State from which they moved from, before being permitted to vote.”

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## VOTERS—REQUIRED TO REGISTER

May 20, 1926.

*Mr. M. F. Burghard, Esq.,  
Supervisor of Registration,  
Quincy, Florida.*

Dear Sir:

Your favor of the 18th inst., has been received.

It is my understanding of the law that electors will be required to register in the general county registration books

for the General Election except in cities and towns of more than 20,000 population where biennial registration is required.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

REGISTRATION—MANNER OF; PUNISHMENT FOR  
FALSE SWEARING

May 31, 1926.

*B. L. Blackburn, Esq.,  
Supervisor of Registration,  
Tampa, Florida.*

Dear Sir:

Your letter of May 29th, addressed to the Attorney General, has just been received.

I note your inquiry as to your right to strike from the registration books the names of parties illegally registered.

Section 244 of the Revised General Statutes, among other things, makes it the duty of the County Commissioners

“ to examine and revise the registration books on the first Wednesday after the same are closed and to erase therefrom the names of all such persons\*\*\*who are otherwise disqualified to vote.”

If any parties have illegally registered, i. e., registered when they were not entitled to do so, they are disqualified to vote and it was the duty of the County Commissioners to erase their names from the registration books.

Section 222 of the Revised General Statutes provides that upon an application for registration each elector shall be required to take and subscribe the oath which is pro-



vided in said Section. If any party in registering has made a false oath as a prerequisite to such registering, then he would be amenable to criminal prosecution for false swearing.

Very truly yours,

H. E. CARTER,

Asst. Attorney General.

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SUPERVISOR OF REGISTRATION—COMPEN-  
SATION OF

July 3, 1926.

*J. W. Davis, Esq.,  
Supervisor of Registration,  
Clearwater, Florida.*

Dear Sir:

Your favor of the 1st inst., with reference to compensation of Supervisor of Registration and payment for extra help, has been received.

The Board of County Commissioners would be authorized to employ whatever clerical assistance they find necessary to properly do the work of the office. The statute fixes your salary or compensation at \$2400 per year. Of course, when the work gets too heavy to be performed by one man then the Board of County Commissioners would be authorized to employ whatever additional help is necessary to do the work of the office.

Very truly yours,

J. B. JOHNSON,

Attorney General.

## BOARDING HOUSES—LICENSES REQUIRED

August 6, 1926.

*J. W. Davis, Esq.,  
Supervisor of Registration,  
Clearwater, Florida.*

Dear Sir:

Your favor of the 4th inst., has been received.

Section 8427, Revised General Statutes, requires license taxes to be paid on boarding houses.

You state in your letter that your wife's boarding house carries about 25 beds. You would be due to pay a license tax for 15 and less than 25 beds, \$10.00 to the State and \$5.00 to the County.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## REGISTRATION BOOKS—TIME FOR CLOSING

August 27, 1926.

*Miss Vida Bean,  
Supervisor of Registration,  
Fort Pierce, Florida.*

Dear Madam:

Your favor of the 25th inst., has been received.

Section 227, Revised General Statutes, provides that the registration books shall be kept open from the first Monday in September until the second Saturday of the month preceding the day in which there is a General Election. This would make October 16th as the day on which the books should be closed.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## ELECTORS—QUALIFIED, PUBLICATION OF LIST OF

September 11, 1926.

*Mr. John A. Moore,  
Supervisor of Registration,  
Bartow, Fla.*

Dear Sir:

Your favor of the 9th instant, with reference to publishing list of qualified electors in your County, received.

I find nothing in the law requiring that lists of qualified electors for the whole county be published in one newspaper.

It is my opinion that if these lists are published as to precincts in a newspaper published in such precinct that they would be held valid. Of course, this is only my opinion and the court might hold differently.

I would advise that you consult the County Attorney, and be governed by his advice, as his advice and opinion will have as much force and effect as mine would have.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

## BOND ELECTION—WHO QUALIFIED TO VOTE

September 13, 1926.

*Hon. B. L. Blackburn,  
Supervisor of Registration,  
Tampa, Fla.*

Dear Sir:

Your favor of the 11th instant, with reference to qualifications of electors for bond election, received.

Chapter 9294, Acts of 1923, provides that no one shall be allowed to vote in bond elections except free-holders and who are otherwise qualified by registration and payment of poll taxes.

There is no time limit for registering and payment of poll taxes for such election.

The time limit for registering and paying poll taxes for the General Election in November is Saturday, October 9th.

Yours very truly,

J. B. JOHNSON,  
Attorney General.

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BALLOTS—INSERTING NAMES DO NOT INVALIDATE

October 14, 1926.

*J. W. Jones, Esq.,  
Supervisor of Registration,  
Trenton, Florida.*

Dear Sir:

Your favor of the 12th inst., has been received.

Where the electors write the name of a candidate on a ticket, it is my opinion the votes should be counted regardless of the fact that the candidate was a candidate or voted in the primary election. Where one participates in a Primary Election either by voting or by being a candidate he is not entitled to have his name printed on the ballot. This provision does not go far enough to say that votes for him should not be counted where his name is written on the ballot by the electors.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## REGISTRATION LIST—DUTIES OF TAX COLLECTOR

October 26, 1926.

*Hon. F. C. Coles,  
Leon County Supervisor  
of Registration,  
Tallahassee, Florida.*

Dear Sir:

Your favor of the 25th inst., with reference to poll list from Tax Collector, has been received.

Section 248 of the Revised General Statutes provides that the Tax Collector shall make a list of those who have paid their poll taxes in each year prior to the second Saturday of the month preceding the day in any year in which any general or special election shall be held, providing that such list shall be alphabetically arranged. For the election of this year, October 9th was the second Saturday of the month preceding the day of election.

This statute also provides that the Tax Collector shall, within five days after the second Saturday in the month preceding the day of election, make a certified list in duplicate of all persons who have paid their poll taxes for the two years next preceding, one copy of which is to be deposited with the Comptroller and the other copy to be deposited with the Supervisor of Registration. This for the purpose that the Supervisor shall have time to check the same with his registration books. If the tax collector has failed to perform this duty, then he is not properly discharging his duties as required by law.

Very truly yours,

J. B. JOHNSON,

Attorney General.



## TAXES—EXEMPTION ALLOWED WIDOWS, et al.

February 5, 1926.

*H. D. Howell, Esq.,  
Tax Assessor,  
Bonifay, Florida.*

Dear Sir:

Your favor of February 2nd received.

Paragraph 7 of Section 697 of the Revised General Statutes provides:

“There shall be exempt from taxation, property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State, and has lost a limb or been disabled in war or by misfortune.”

Now this exemption above quoted would apply to real and personal property, i. e. this exemption would be allowed on either the real estate or personal property. This same exemption is provided for in Section 9 of Article IX of the Constitution of the State of Florida.

Disabled veterans would be exempt from road or street duty but they would not be exempt from road and street taxes except as provided above. When I speak of road and street taxes I mean the road and street taxes assessed against property and not the road or street tax that is collected in lieu of working the roads or streets, where they are operating that system.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

MUNICIPALITIES—ASSESSMENT OF  
TAXES

April 10, 1926.

*Edward C. Dougherty, Esq.,  
Assessor,  
Miami Shores, Florida.*

Dear Sir:

Your favor of April 7th has been received.

Municipalities incorporated under the general law of the State have to assess taxes strictly in accordance with Section 1891, Revised General Statutes. This means that they are to take the valuation as fixed by the State and County assessment. Only those cities and towns which are authorized by special law to make their own valuation for the assessment of municipal taxes can do so.

You will have to continue assessing under the provisions of Section 1891 until you can get a Special Act of the Legislature authorizing the municipality to fix its own valuation.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## BANKS—ASSESSMENT OF

May 7, 1926.

*S. E. Sparkman, Esq.,  
Hillsborough County Tax Assessor,  
Tampa, Florida.*

Dear Sir:

Your favor of the 6th inst., has been received.

I have given it as my opinion that banks are subject to taxation under the law the same as heretofore. It is my opinion that they should not escape this taxation under the head of intangible property. The Legislature has not under-

taken to define what class of property will be considered as intangible but banks having been subject to taxation under the laws, I am holding that they continue to be taxed.

Should the banks undertake to escape taxation it will mean the Legislature will pass some Act that might not be as favorable to them as the present law. I am in hopes the banks will not contest this matter.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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TAXES—ASSESSMENT AGAINST ORLANDO STATE  
BANK

June 17, 1926.

*Arthur Butt, Esq.,  
Tax Assessor,  
Orlando, Florida.*

Dear Sir:

I am in receipt of your favor of the 15th inst., with reference to assessment against the State Bank of Orlando.

If the State Bank of Orlando pays taxes on this real estate, the value of the real estate as assessed should be deducted from the capital stock and surplus assessed, going on the theory that real estate is assessed at 50% of its value. If the bank is paying taxes on real estate which is assessed at \$43,000 it is presumed that the real estate is worth \$86,000 actual value. \$86,000 should then be deducted from the capital stock and surplus.

If the bank pays taxes on the real estate valued at \$43,000 then that amount should be deducted from the capital stock and surplus to be assessed.

If I understand your proposition, then the \$43,000 real estate value should be deducted from \$120,270, the 50% of the value of the capital stock and surplus.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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EQUALIZATION BOARD, COUNTY COMMISSIONERS  
TO COMPLY WITH LAW

July 17, 1926.

*Cyril Baldwin, Esq.,  
Tax Assessor,  
Sebring, Florida.*

Dear Sir:

Your wire of the 16th has been received.

The County Commissioners as an Equalization Board should comply strictly with the provisions of Sections 723 and 725 of the Revised General Statutes. The fifteen (15) days' notice required to be given should be published in the same paper for full fifteen (15) days before the Equalization Board meets.

In the matter of tax sale and advertising lands for sale for taxes, the provisions of Section 756, Revised General Statutes, should be strictly complied with.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

COUNTY OFFICER—IF ELIGIBLE TO APPOINTMENT  
OFFICERS' RESERVE CORPS U. S. ARMY

February 11, 1925.

*Hon. R. V. Lee,  
Tax Collector, Lee County,  
Fort Myers, Florida.*

Dear Sir:

Replying to your favor of the 9th instant in which you enclose letter from C. A. Watkins, Captain Ordnance Department, Atlanta, Georgia, I beg to say:

It is my opinion that the provisions of Section 15, Article 16 of the Constitution of the State of Florida, to-wit:

“No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State—\*\*\*\*\*”

do not preclude one holding office in the State of Florida from, at the same time, holding an appointment in the Officers' Reserve Corps of the United States Army.

Sections 400 to 405, Revised General Statutes of Florida, provide for leave of absence of County Officials under certain conditions, but these conditions appear to apply only when such absence is for the purpose of going into service when the state of war exists, and, therefore, you are to consider whether or not you being appointed in the Officers' Reserve Corps will interfere with your official duties, and, of course, no public official should assume any position which will interfere with his official duties.

Yours very truly,

RIVERS BUFORD,  
Attorney General.



## POLL TAXES—PAYMENT OF

May 1, 1926.

*Mrs. S. D. Curtis,  
Tax Collector,  
Gadsden County,  
Quincy, Florida.*

Dear Madam:

I am in receipt of your favor of the 30th ult., with reference to payment of poll taxes.

Section 215 of the Revised General Statutes, as amended by Chapter 8583, Acts of 1921, applies to general elections and not to primary elections except as the primary election law makes it apply.

Section 314 of the Revised General Statutes applies to payment of poll taxes for primary elections and provides that the poll taxes must be paid on or before the second Saturday of the month preceding the day of election. In construing the provisions contained in Section 314 the Supreme Court has held that the word "month" mentioned in the statute means calendar month or that period of time elapsing between a given date and the corresponding date of the next preceding month by name. The primary election is to be on June 8th. Then the next preceding month would begin on May 8th, which is Saturday. This would make May 8th the first Saturday of the month next preceding and May 15th the second Saturday of the month next preceding the day of Election.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## POLL TAXES—WHEN PAYMENT REQUIRED

May 1st, 1926.

*Hon. J. P. Moore,  
Tax Collector,  
Moore Haven, Fla.*

Dear Sir:

Section 314, Revised General Statutes, with reference to qualifications in primary elections, reads as follows:

“No person, unelss exempt under the provisions of law relating to general elections, shall be permitted to vote at a primary election who shall have failed to pay at least on or before the second Saturday in the month preceding the day of such election his poll taxes for two years next preceding the year in which such primary election shall be held.”

The last proviso in paragraph 6 of Chapter 8583, Laws of Florida, Acts of 1921, provides:

“that any person who has only been a resident of this State one year must produce a poll tax receipt from the state from which they moved from before being permitted to vote.”

My opinion is that it is the purpose and intention of these laws that all poll taxes actually due for the two (2) years shall be paid whether such poll taxes were due in Florida or in some other state. Of course, if the State from which the elector moved assessed no poll taxes then he could not pay such poll taxes and in my opinion he would be allowed to register and vote. You should have competent evidence that no poll taxes were assessed by law in the State from which the elector came.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## TAX ASSESSMENT ROLL—DUTY OF TAX ASSESSOR

May 13, 1926.

*J. Sol Hall, Esq.,  
Franklin County Tax Collector,  
Apalachicola, Florida.*

Dear Sir:

Your favor of the 11th inst., with reference to taxes in your County, has been received.

The law makes it the duty of the Tax Assessor to make up the assessment roll. The roll is then carried before the County Commissioners, who form an Equalization Board. After the roll has been approved by the Equalization Board or the Board of Commissioners and the warrant of the Assessor attached thereto and delivered to the Tax Collector, the Assessor has absolutely no authority over it. The Tax Assessor has not authority over the tax roll after it has been equalized by the Board of County Commissioners.

The Comptroller has a copy of the roll in your hands. You are charged with the amount of taxes run out thereon. You are supposed to collect these taxes as assessed unless you find palpable error and then you get credit for this in your Error and Insolvency List.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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TAX COLLECTOR—WHEN LIABLE FOR FUNDS  
DEPOSITED

July 27, 1926.

*A. B. McDuffie, Esq.,  
Tax Collector,  
Lake City, Florida.*

Dear Sir:

Your favor of the 24th inst., with reference to money

deposited by you in the State Exchange Bank as Tax Collector of Columbia County, Florida, has been received.

If this money was deposited by you lawfully, I am inclined to the opinion that the funds to which the money belonged would have to take the loss. The statute requires that Tax Collectors pay over money to the proper officer once each week. If you failed to do this and money was deposited by you which should have been turned over to the proper officer then it is my opinion you and your bondsman would be liable.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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COUNTY COMMISSIONERS—NOT AUTHORIZED TO  
PRINT CERTAIN NAMES ON BALLOT FOR  
GENERAL ELECTION

October 1, 1926.

*Herbert A. Rider, Esq.,  
Att'y. for County Commissioners,  
LaBelle, Florida.*

Dear Sir:

Your favor of September 29th has been received.

Under the provisions of Chapter 9293, Acts of 1923 I do not think that the County Commissioners would be authorized to have printed on the ballot for the General Election the name of any candidate who was defeated in the Primary or the name of anyone who voted in the Primary.

Of course, where there was no nomination by reason of a tie vote they would be warranted in placing the names of both candidates on the ballot for the General Election.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SHERIFF—WHEN FEES ACCRUE

February 19, 1925.

*Hon. W. H. Dowling,  
Sheriff of Duval County,  
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of February 18th enclosing letter and bill from Sheriff Chase I beg to say it is my opinion no cost accrues in favor of a Sheriff holding a warrant for arrest unless the arrest is made. There is no fee fixed by statute for making return on warrant. No copy of process is necessary unless service is made, but as you state you made the copy and transmitted the same to the Sheriff of Dade County, there will be no fee accruing to him for making the same.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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SHERIFFS—FEES OF

February 21, 1925.

*Hon. W. H. Dowling,  
Sheriff Duval County,  
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of February 20th I beg to say I think the only fees Sheriffs are entitled to in the case of



the non-service of a civil or criminal subpoena is 5c for return on the subpoena.

In my opinion the correct charge for service in your County of a civil summons is, copy 10c, return 5c, mileage 10c per mile each way, service of writ 50c.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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SHERIFFS—FEES OF

April 27, 1925.

*Hon. A. J. Lewis,  
Sheriff, Jackson County,  
Marianna, Fla.*

Dear Sir:

Replying to your letter of April 24th I beg to say it is my opinion under the law of this State that the Sheriff is entitled to a fee of \$4.00 for each day upon which he officiates in any Court in his County either in person or by his Deputy.

He is entitled to only one fee for any one day regardless of how many cases may be heard and regardless of how often the Court may be convened or adjourned in that one day. The fee for such services on any day should be prorated between the cases disposed of on that day if it is practicable to do so.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

## BONDS, BAIL—APPROVAL OF

June 10, 1925.

*Hon. H. R. Chase,  
Sheriff, Dade County,  
Miami, Fla.*

Dear Sir:

Replying to your letter of June 6th I beg leave to say:

Sections 5982, 5983 and 6046, Revised General Statutes of Florida, state clearly when bail bonds may be approved by the Sheriff and when the same may be approved by the Court. It appears from the provisions of Section 6046 that all bail bonds given in County Judges' Courts and Justices of the Peace Courts, except appeal bonds, may be approved at any time either by the Sheriff or by a Magistrate issuing the warrant. Appeal bonds must be approved by a Magistrate.

Section 6121, Revised General Statutes of Florida, provides that a fine and cost bond shall be approved by the Court if the Court is in session at the time the bond is given, —otherwise such bonds are to be approved by the Sheriff or by the officers acting in that capacity.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

## SHERIFF, DEPUTY—WHEN ENTITLED TO FEES

June 18, 1925.

*Hon. Henry R. Chase, Sheriff,  
Dade County,  
Miami, Fla.*

Dear Sir:

Replying to your letter of recent date I beg to say if a Deputy Sheriff is under subpoena at any court as a Wit-

ness, I think, technically, he is entitled to receive fees as a witness, and that any other County Officer or State Officer who is required to be in attendance upon the court as a witness, and is not in attendance upon the court in any other capacity, is entitled to receive fees as witnesses. If, however, the Officer is in attendance on the court by reason of some other official duty requiring him to be there, I do not think he is entitled to receive pay as a witness. In other words, a Deputy Sheriff who is in attendance on the court as an executive officer of the Court, and for whose attendance the Sheriff is entitled to receive a per diem, is not entitled also to be paid as a witness.

The theory of the law is that the person is being paid for his time consumed and is not being paid to testify.

Yours very truly,

RIVERS BUFORD,  
Attorney General.

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SHERIFFS—WHEN AUTHORIZED TO MAKE  
SEARCHES

August 2, 1926.

*Henry Clay Mitchell, Esq.,  
Santa Rosa County Sheriff,  
Milton, Florida.*

Dear Sir:

Your favor of the 31st of July has been received.

Chapter 11385, Acts of the Special Session of the Legislature, 1925, provides that Sheriffs, Deputy Sheriffs and other police officers making lawful arrests of any person may lawfully search such persons. It further provides that when arresting anyone for violating the speed laws, for reckless driving, driving while drunk or intoxicated, that you can search a person and the car of one so lawfully arrested.

I would advise you to consult this Act and inform yourself of its provisions.

The Supreme Court did not go to the extent of holding that general searches could be made without a search warrant. They were dealing with a particular case where parties were found with a quantity of liquor.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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SLOT MACHINES—WHEN LAWFUL TO USE—  
LICENSE FOR

March 31, 1926.

*J. H. Hancock, Esq.,  
City Attorney,  
Punta Gorda, Fla.*

Dear Sir:

Your favor of the 29th inst., with reference to slot machines, has been received.

The law places a license tax on slot machines used for vending merchandise. This tax is \$5.00 for the State. See section 978, Revised General Statutes.

It is not unlawful to use slot machines unless they are used as gambling devices. They are being suppressed over the State generally where used for this purpose. As to whether or not a slot machine is being used as a gambling device depends upon the facts in each case.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## COMMITMENT OF BOYS TO INDUSTRIAL SCHOOL

April 26, 1926.

*J. C. Lanier, Esq.,  
Chief Probation Officer,  
107 Market Street,  
Jacksonville, Florida.*

Dear Sir:

Your favor of the 23rd inst., has been received.

You will appreciate that the reform school at Marianna was created for the purpose of taking care of youthful criminals. We appreciate that the word "delinquent" as used in the statute includes crime also.

The Board is taking the position that only criminals should be sent to this institution. For this reason it will be necessary for the commitment to show that the boy committed was guilty of some offense punishable under the statute as a crime. It will be just as easy to charge a boy with a definite offense as to make the charge under the general term of "Delinquent." If for any reason the term "delinquent" is used then it will be necessary that information be furnished the institution properly authenticated that the boy was convicted of some criminal offense.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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PLATS AND MAPS—WHEN SUBJECT TO RECORD

May 5, 1926.

*Mr. A. L. Mathews, Chairman,  
City Planning Board,  
West Palm Beach, Florida.*

Dear Sir:

This will acknowledge the receipt of your communication of May 3rd.



Before plats are allowed to be recorded by the Clerk of the Circuit Court they must be certified by the Engineer as required by Section 9 of Chapter 10275, Acts of 1925, and must be approved either by the County Commissioners, Town Board or Council or by the Board of Commissioners.

If the plat or map is wholly within a municipality and is approved by the proper city officials then it does not have to be approved by the Board of County Commissioners. If the map or plat is of property not within a municipality then the approval of the County Commissioners should be had.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### TAXATION—VALUATION

June 9, 1926.

*P. H. Grelle, Esq.,  
Clerk & Collector,  
Brooksville, Florida.*

Dear Sir:

Your favor of June 5th, with reference to the assessment of taxes in your city, has been received.

The city can go no farther in this matter than your charter authorizes. Under the clause of your charter which reads:

“\*\*\*but in no case shall the valuation of said property for the purposes of taxation exceed the County and State valuation.”

the matter is placed back where it was, and your city would only be authorized to use the State and County valuation.

The only remedy would be to amend this charter so as to authorize the city to make its own valuations for the purpose of taxation.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### HARBOR MASTERS—APPOINTMENT OF

August 21, 1926.

*Hon. Walter A. Richards,  
City Manager,  
Daytona Beach, Florida.*

Dear Sir:

Your favor of the 19th inst., with reference to appointment harbor master for Daytona Beach, has been received.

These appointments have to be made by the Governor. The laws governing harbor masters, their appointment and duties etc., will be found in Sections 2492-2506 inc., Revised General Statutes.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### CITY OFFICERS—WHEN QUALIFIED

October 21, 1926.

*Hon. D. F. Baker, Mayor,  
Miami Shores, Florida.*

Dear Sir:

Your favor of October 19th, with reference to qualifications of persons to run for the office of alderman in a city or town, has been received.

Most cities and towns—whether created by special char-

ter or under the general municipal law of Florida provide that the officers of said town shall be residents and qualified electors therein. This is usually provided for either in the charter or by city or town ordinance. If no such qualification is prescribed either in the special charter or by an ordinance then under the ruling of the Supreme Court in the case of *STATE v. GEORGE*, 23 Florida 585, one can serve in an official position in a city or town, either as mayor, alderman or other officer, whether or not they be residents or qualified electors in said city or town.

There are no qualifications prescribed in the laws of Florida governing the incorporation of cities and towns and prescribing duties and powers of their officers.

Under the ruling of the Court in the case above cited it is my opinion that a non-resident of the Town of Miami Shores, it being incorporated under the general municipal law of Florida and having no ordinance to the contrary, can serve as mayor, alderman or other officer of your city.

Of course, you would want to elect someone who could give his time to the duties of the office. In every instance officers are presumed to give their time and attention to the discharge of the duties of the office.

With best wishes, I am,

Very truly yours,

J. B. JOHNSON,

Attorney General.

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#### ELECTIONS, CITY—QUALIFICATION OF ELECTORS

December 29, 1926.

*Hon. Edgar A. Wright, Mayor,  
New Port Richey, Florida.*

Dear Sir:

Your favor of the 27th inst., with reference to qualifications of electors to vote in City election, has been received.

If your City Ordinance in its language follows the language of the statute it provides:

"No person shall be permitted to vote at an election who shall have failed to pay, at least on or before the fourth Saturday preceding the day of such election, his or her poll taxes for the two years next preceding the year in which such election shall be held."

Under the wording of this statute it would be necessary for the voter to pay his poll taxes for 1925-6 to vote in the January election.

Of course, your city ordinance would not necessarily have to follow the State statute but if it does then the voters will have to pay poll taxes for 1925-6.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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ALCOHOLIC BEVERAGES—MANUFACTURE AND  
SALE OF

January 6, 1926.

*B. T. Simmons, Esq.,  
Prohibition Administrator,  
Tampa, Florida.*

Dear Sir:

I am in receipt of your favor of January 4th, reading in part as follows:

"This office would appreciate your opinion based upon the interpretation of your State law regarding the manufacture, transportation, sale, etc., of intoxicating liquors, with particular reference to the laws of 1918, extra session, Chapter 7736, No. 11, page 30, as amended by Chapter 7890, No. 108 of Acts of 1919, Page 238, which

sections are understood to be the latest legislative enactment on the subject for Florida.

"Office inquiry in this respect is based upon certain correspondence had with the Jax Ice & Cold Storage Company, Jacksonville, Florida, which concern is the holder of a permit to operate a cereal beverage plant, and has on file an application for renewal of such permit for the year 1926. Some months ago one of the field branches of the Prohibition Unit advised that this company, while making its product, allowed the cereal beverage to largely exceed one-half of one percent of alcohol by volume, but before placing the article upon the market it was de-alcoholized to a point within the statutory requirement of less than one-half of one percent of alcohol by volume."

I note in the second paragraph of your letter you state:

"\*\*\*Some months ago one of the field branches of the Prohibition Unit advised, that this company, while making its product, allowed the cereal beverage to largely exceed one-half of one percent of alcohol by volume, but before placing the article upon the market it was dealcoholized to a point within the statutory requirement of less than one-half of one percent of alcohol by volume."

Section No. 1, of Chapter 7736 of the Laws of Florida, same being Section 5458 of the Revised General Statutes, provides that it shall be unlawful to manufacture, sell, barter or exchange, or cause to be manufactured, sold, bartered or exchanged, or concerned in the manufacture, sale, barter or exchange, or transport, or cause to be transported, or concerned in the transportation, etc., of any alcoholic or intoxicating liquors or beverages, whether spirituous, vinous or malt, etc.



Section No. 7 of this same Chapter, same being Section 5469 of the Revised General Statutes, provides:

“That all drinks, beverages or alcoholic liquors, for beverage purposes, containing one-half of one percentum of alcohol, or more, by volume, at sixty degrees Fahrenheit, and all intoxicating liquors and beverages, whether spirituous, vinous, or malt, shall be deemed and held to be within the prohibitions of this article.”

In your letter you state that this cereal beverage, before being offered for sale, was dealcoholized to the point within the statutory requirements. I do not think it would be a violation of the law if at some point in the process of manufacture the beverage contains more alcohol than the one-half of one percent, provided that the finished product offered for sale met the statutory requirements.

If the conditions are as set forth in your letter then, in my opinion, it would be proper for permit to be granted.

I can easily see how an unlawful beverage might be placed on the market by this firm. I am not advised of the process by which this beverage is dealcoholized, yet if it is done in the course of manufacture and only a lawful beverage is offered for sale or used for beverage purposes, whether sold or not, then there would be no violation of the law.

I am of the opinion that the proper course to pursue would be to take up some of this manufactured beverage and have it analyzed to ascertain its alcoholic contents, i. e. provided there is any good reason to believe that it is an unlawful beverage. Provisions of Section 5470, Revised General Statutes, state this method of ascertaining the alcoholic contents of a beverage.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

STATE OFFICIAL—PROHIBITED FROM HOLDING  
FEDERAL OFFICE

June 28, 1926.

*The Honorable  
The Director of Prohibition,  
Bureau of Internal Revenue,  
Washington, D. C.*

Sir:

Your favor of the 25th inst., with enclosure of copy of President's Order, authorizing the appointment at nominal compensation of State, County or Municipal Officers as prohibition agents, has been received.

Section 15 of Article XVI of the Constitution of Florida provides:

"No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; Provided, Notaries Public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office."

Section 17 of Article XVI of the Constitution of Florida provides:

"No person shall hold any office of trust or profit under the laws of this State without devoting his personal attention to the duties of the same."

I doubt if these provisions of the Constitution would apply to city police officers. As to whether or not city police-

men would be allowed to accept the appointment of prohibition officers would depend upon city ordinances or upon the will of those employing the city policemen.

Sheriffs and their deputies and Constables will be considered Constitutional officers of this State and I doubt very much if they could, under the provisions of the Constitution quoted, accept the appointment of a prohibition officer. These questions would have to be passed upon by some court of competent jurisdiction before the law on same would be definitely settled. My opinion is not binding on anyone and would not be binding on any court in which this question might arise. Divided allegiance and defided authority are not to be desired in any office or employment.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### MARRIAGE LICENSES—LAW DEFINED

June 3, 1926.

*Joe P. Bowdoin, M. D.,  
Deputy Commissioner of Health,  
State Board of Health,  
Atlanta, Georgia.*

Dear Sir:

Section 3935, Revised General Statutes of Florida, provides for the issuance of marriage licenses by the County Judge of the County wherein the woman resides. It further provides that if either party to be named in the license be under the age of twenty-one (21) years the County Judge shall require satisfactory evidence of the consent of the parent or guardian of such minor to the marriage except in cases where such minor has been heretofore married.

Section 3934, R. G. S., authorizes all regularly ordained ministers of the gospel in communion with some church and all judicial officers and Notaries Public of the State of Florida to solemnize the rites of the matrimonial contract, under the regulations prescribed by law.

Section 3935, R. G. S., provides that before any of the persons named in the preceding Sections shall solemnize any marriage he shall require of the parties a marriage license issued in accordance with the requirements of Section 3933, R. G. S.

Section 3936, R. G. S., provides for the recording of all marriage licenses by the County Judges of the State in substantially bound books for that purpose, giving the names of the parties, date of issuance, the name of the person solemnizing the marriage and the date of marriage and return.

Section 3938, R. G. S., prohibits the marriage between white and negro persons.

Section 3939, R. G. S., defines negro persons to be every person who shall have one-eighth ( $\frac{1}{8}$ ) or more of negro blood.

Section 3940, R. G. S., prohibits the issuance of marriage licenses by the county judges for the marriage of white and negro persons.

We have no law in this State requiring applicants for marriage licenses to stand a physical examination or what is commonly known as a "eugenics law."

Very truly yours,

H. E. CARTER,

Assistant Attorney General.

## ALIENS—PROPERTY RIGHTS

December 28, 1926.

*Hon. U. S. Webb,  
Attorney General of California,  
Attention MR. FRANK ENGLISH, DEPUTY,  
State Building,  
San Francisco, California.*

Dear Sir:

Your favor of the 22nd inst., has been received.

At the General Election last November (1925) the voters of the State adopted a Constitutional Amendment as follows:

“Section 18. Foreigners who are eligible to become citizens of the United States under the provisions of the laws and treaties of the United States shall have the same rights as to the ownership, inheritance and disposition of property in the State as citizens of the State, but the Legislature shall have power to limit, regulate and prohibit the ownership, inheritance, disposition, possession and enjoyment of real estate in the State of Florida by foreigners who are not eligible to become citizens of the United States under the provisions of the laws and treaties of the United States.”

There has been no legislation on this Amendment but the same is in full force without any legislation.

Very truly yours,

J. B. JOHNSON,  
Attorney General.



## FOREIGN CORPORATIONS—CHARTER FEES

December 13, 1926.

*Mr. Thomas Creigh, General Attorney,  
The Cudahy Packing Co.,  
111 West Monroe St.,  
Chicago, Illinois.*

My dear Mr. Creigh:

Your favor of December 9th, with reference to the above matter, has been received.

You will appreciate the fact that the General Corporation Law of 1925 expressly provides:

"The provisions of this Act shall apply to corporations incorporated, or consolidated hereunder and to corporations which shall reincorporate hereunder in the manner provided in Section 64 hereof and to no other corporations."

For this reason, we cannot apply this law to any other corporation.

It is accepted as a principle of law that corporations organized under the laws are subject to any amendment the Legislature sees fit to make to such laws.

I am not influenced in any degree by the amount of charter fees that your company might have to pay. As far as I am personally concerned, you could continue to do business without paying additional fees. I am inclined to think that Florida has been more than generous to invested capital and has pursued that course that would tend to encourage the investment of capital in this State. We have never imposed Corporation Taxes, Franchise Taxes, Inheritance or Income Taxes.

When your corporation was admitted to do business in the State, it immediately went on the same footing with cor-

porations organized under the laws of the State of Florida. Any corporation organized and existing under the laws which existed prior to the 1925 Act are still governed by those Laws. Any corporation organized prior to the 1925 Act and subsequent to the Amendment of 1923, increasing its capital stock would be required to pay the additional charter fees provided in the 1923 Act. If your corporation were a Florida corporation and should undertake to increase its capital stock as you have done, it would be required to pay the same fees we are exacting from you.

I note the additional authorities cited by you but I am still of the opinion that the charter fees incident to a permit to do business in this State will not and can not be construed as a tax on interstate commerce. There is a clear line of distinction between taxes proper and charter fees required. If you had been granted a permit to do business subsequent to 1925, then as I construe it, your charter fees would be governed by the 1925 Act.

We have corporations in Florida governed by separate and distinct laws. We have to classify the foreign corporations under one or the other of these statutes. You, having become a Florida corporation—or authorized to do business in Florida—prior to the Act of 1925, we are forced to classify you under the Acts existing prior to that time.

I feel sure the Courts would sustain my construction in this matter. I am unable to modify or change the opinion already rendered.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

COUNTY JUDGES—QUALIFICATIONS AND TENURE  
OF OFFICE

November 13, 1926.

*National Probation Ass'n., Inc.,  
Attention MR. R. E. DROWNE, Field Sec.,  
370 Seventh Ave.,  
New York City.*

Gentlemen:

This will acknowledge the receipt of your questionnaire of the 10th instant.

Answering your first question, asking how the County Judge is selected, Section 16 of the Constitution of the State of Florida reads as follows:

"There shall be in each county a county judge who shall be elected by the qualified electors of said county at the time and places of voting for other county officers and shall hold his office for four years. His compensation shall be provided for by law."

Should the County Judge resign, die or be impeached the Governor can appoint a judge to fill the unexpired term.

Section 33 of the Florida Constitution reads:

"When the office of any judge shall become vacant from any cause, the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement, or other cause created such vacancy."

Answering your second question the qualifications for eligibility to the office of county judge are that a person must be twenty-one years of age and a qualified elector of the county.

Answering your third question, his tenure of office is four years.

Answering your fourth question: The County Judge gets no salary; just commissions and fees.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

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#### TEACHERS—MUST HOLD CERTIFICATES

April 10, 1926.

*R. M. Dorsey, Esq.,  
Principal, Okeechobee High School,  
Okeechobee, Florida.*

Dear Sir:

Your favor of the 8th inst., with reference to teachers and teachers' certificates, has been received.

Chapter 9122 of the Laws of Florida, Acts of 1923 governs your situation. Section 1 of this Act provides:

"No person shall be permitted to teach in the public schools of this State who does not hold a teacher's certificate granted under this Act."

The Act then proceeds to provide for fourteen (14) different kinds of certificates, including a temporary certificate. Temporary certificates are only good until the next regular examination.

If you will secure this Act from the courthouse or from some attorney's office it will advise fully what can or cannot be done.

Very truly yours,

J. B. JOHNSON,  
Attorney General.

## TEACHERS—MUST HOLD CERTIFICATES

April 14, 1926.

*Prof. R. M. Dorsey, Principal,  
Okeechobee High School,  
Okeechobee, Florida.*

Dear Sir:

Your favor of the 12th inst., has been received.

In my former letter to you I cited you Chapter 9122, Laws of Florida, Acts of 1923, governing teachers' examinations and teachers' certificates.

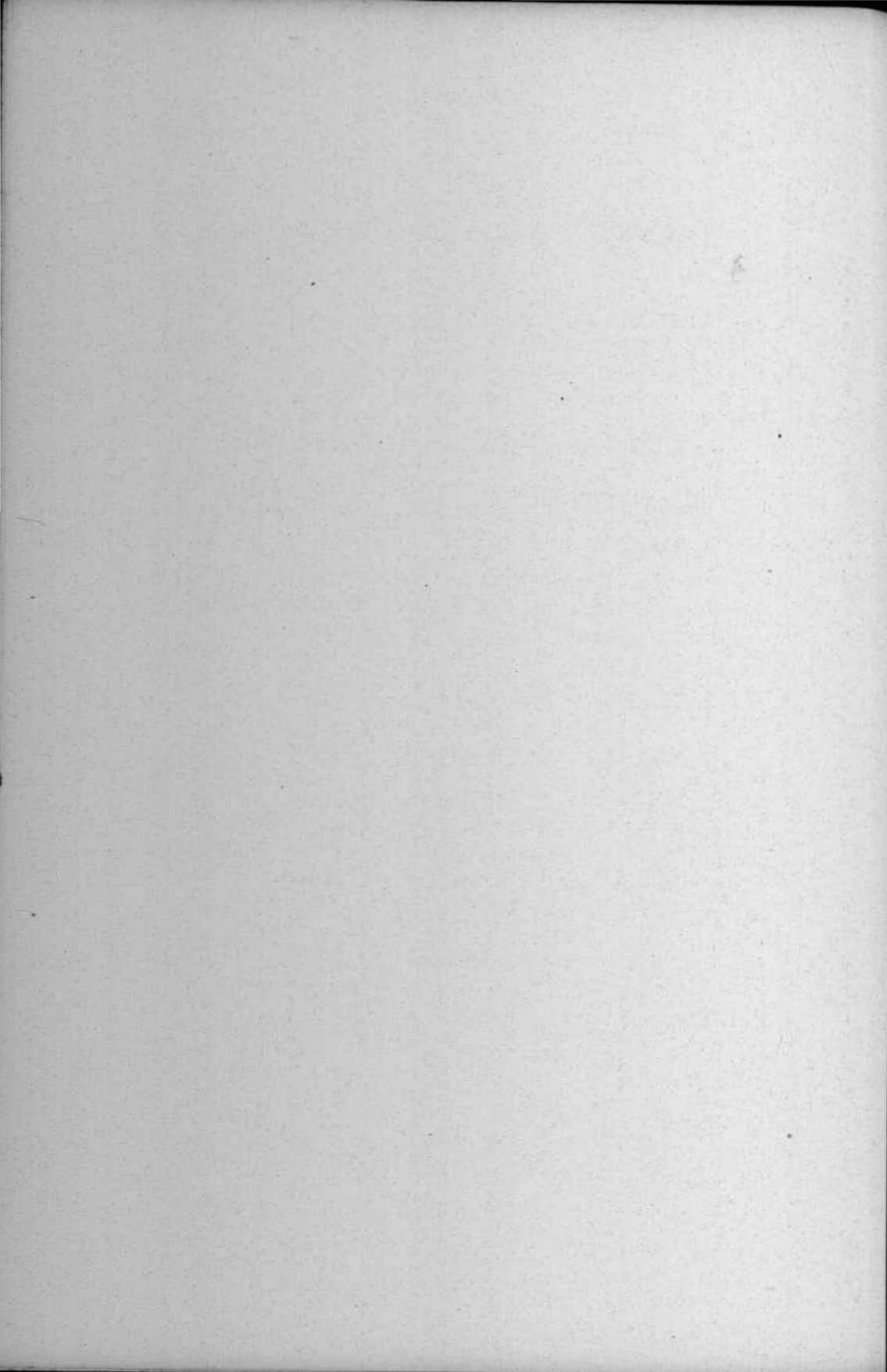
I would not undertake to advise you more definitely because some times there might be some particular fact or condition that would make an opinion generally unsafe or erroneous. I think it would be much wiser to consult the County Attorney or read the law and take it for what it says.

It might be possible that two (2) temporary certificates would be in order but it would not be in order if the holder of a temporary certificate had opportunity to stand the examination but refused to do so. The law provides that no teachers shall be employed who do not hold a certificate as approved by law. Not being on the ground and knowing all the facts in the case I hesitate to give even this much advice.

Very truly yours,

J. B. JOHNSON,  
Attorney General.





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